Volume IX.] *September, 1894.* [*Number 3.*

POLITICAL SCIENCE QUARTERLY.

THE RELATIONS OF THE CITY AND THE STATE OF NEW YORK.

THE relations between the City and the State of New York have at all times been such that it is impossible to understand the political history of the city without studying the state government. There have been changes, even of the most fundamental kind, in the character of these relations; but there has been no time from the first settlement of the province to the present day when the city was not bound to the state by the closest ties. The fundamental law of the city, known as its charter, has always been embodied in acts of the provincial or state authorities, at whose hands it has been subject to change at any time. This has been and is still the legal status of the city. In the powers and privileges recognized or conferred in this fundamental law lies the "right of the city." The officers to be chosen to administer the local government are designated in the charter, and their powers and official tenure depend upon it. In connection with the offices arises what is meant by the "right of the citizens." Here an important change was effected by the amendments to the constitution of the state made in the year 1821, and supplemented by the amendments of 1826 and 1834. Under the earlier charters the appointment and tenure of the city officials were controlled by state officers. These amendments to the constitution finally lodged this control in the local authorities and the inhabitants of the city.

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Both the "right of the city" and the "right of the citizens" need full recognition to secure what is meant by local self-government. In its fullest sense, this has never been enjoyed by New York City. The "right of the city," after a process of gradual enlargement, attained almost complete recognition by the amendment of 1873, which first gave to the city an independent financial board. Since then, however, there has developed a tendency to interference by the legislature with the city's charter, not only by means of general amendments, but through the assumption of the local administration in many directions. This interference has been both direct, by creating new local offices to be filled by the state,[1] and indirect, by prescribing duties in detail for existing local officials, thus modifying the power conferred by the charter.

The "right of the citizens" is at the present time nearer than ever before to full recognition; there is now a general unanimity of opinion in favor of the right of the inhabitants to choose their own officials. Unless, however, these officials have duties prescribed by a general law and are then free to perform them without interference, but with full responsibility to the city, and even to the state, there is no true home-rule.

I.

Little need be said of the governmental forms introduced under the Dutch rule of the province, which was first interrupted in 1664, and finally overthrown ten years later. Because of internal dissensions, Indian wars and the indifference of the home government, the progress made in this period, either in numbers or in civilization, was unimportant. In 1664 the population of the entire province of New Netherland was only about 10,000, while twenty years later, under the vigorous rule of the English, it had increased to 50,000.

The Dutch depended for the success of their colony on a commercial corporation, the Dutch West India Company, which, in return for valuable trading privileges, had assumed

[1] For example, the Aqueduct Board, the Rapid Transit Commission and the Board of Electrical Control.

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the obligation to "advance the peopling of those fruitful and unsettled parts, and do all that the service of these countries and the profit and increase of trade shall require." To the company, however, "the profit and increase of trade" was naturally the leading consideration, and the "peopling of those fruitful and unsettled parts" was of little significance except as it might contribute to the profit of trade. That a permanent and successful colony cannot be reared on such a foundation, has become a mere truism. Bancroft, in his *History of the United States*, well says:

> The province had no popular freedom, and therefore had no public spirit. In New England there were no poor; in New Netherland the poor were so numerous that it was difficult to provide for their relief. The one easily supported schools everywhere, and Latin schools in the larger villages; in the other, a Latin school lingered with difficulty through two years, and was discontinued. In the one, the people in the hour of danger defended themselves; in the other, the burden of protection was thrown upon the company, which claimed to be the absolute sovereign.

In the year 1626, when Peter Minuit, the earliest Dutch governor, arrived in the colony, his first act was the purchase of Manhattan Island from the Indians for sixty guilders (twenty-four dollars), and on this island he established the seat of government for the province of New Netherland. The form of government was very simple: all power was vested in the governor and the council which he appointed. The arbitrary conduct of Minuit and his successors caused much trouble in the colony, and when circumstances rendered necessary extraordinary demands for money and arms, the colonists were able to secure some concession of representation. A popular representative body, known as the "twelve men," met in the year 1641; and another, known as the "eight men," in 1644. The remonstrance of these bodies caused the recall of Governor Kieft, and his successor, Peter Stuyvesant, arrived in the colony in May, 1647, with instructions to grant liberal concessions to the inhabitants. But the new governor was no more inclined to be liberal than his predecessors, and com-

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plaints to the home government continued. A form of local self-government having been bestowed in 1646 upon Breucklen (Brooklyn), a demand for similar privileges was made in behalf of Manhattan. The controversy that followed resulted in the concession of some rights of local independence to New Amsterdam, which, until then, had been completely under the control of the province. In April, 1652, the Dutch authorities authorized the establishment of a "burgher government" for New Amsterdam, to correspond in form as much as possible to the local governments in the fatherland. In the Dutch towns the *Vroedschap*, a great town council, consisting generally of inhabitants possessed of certain property, chose eight or nine good men, who in turn chose the burgomasters and *schepens*, while the *schout* was usually appointed by the count on nomination of the *Vroedschap*.[1] But Stuyvesant was not inclined to bestow even such a restricted form of representative government on New Amsterdam. He inaugurated the city government in February, 1653, by himself appointing the burgomasters and *schepens*; and he named as *schout* the Dutch West India Company's fiscal agent. Moreover, he insisted that the provincial government should continue "to make ordinances or publish particular interdicts even for New Amsterdam,"[2] and he took care that the power thus reserved should not become merely nominal.[3]

[1] The burgomasters and *schepens* had judicial authority, besides acting as a common council and making ordinances; the *schout* was a fiscal officer.

[2] Brodhead, I, 549.

[3] The activity of Stuyvesant and the provincial authorities is well shown in the Records of the City of New Amsterdam, edited by Henry B. Dawson, published privately in 1867. This volume contains the "Orders of the Director-General and Council of New Netherland" pertaining to the City of New Amsterdam for the years 1647 to 1659; and these orders will be found to deal with the minutest details of local interest. Thus, an act of January 23, 1648, provides that "from this time forth, no wooden or plated chimneys shall be permitted to be built in any houses between the Fort and the 'Fresh Water'"— the first fire limits of the city being thus between the Battery and the present site of the Tombs. Other acts pertain to the observance of the Sabbath and to matters of excise and police. It should be noted here that though the City Records from 1830 to date have been printed, the previous records are not yet published, and until they are published no satisfactory history of the municipality can be written.

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The separation of the city from the province was thus first realized in 1653, but without any very definite concessions either as to form of government, or as to tenure or appointment of local officials. The struggle for greater privileges continued. In 1658 Stuyvesant yielded, to the extent of permitting the burgomasters and *schepens* to present twice the necessary number of names, out of which the governor selected their successors; and in 1660 he appointed a separate *schout* for the city.[1] But the result of all these concessions, as summed up by Bancroft, was that "the city had privileges, but not the citizens." Yet the first step towards local self-government had been taken, and it was never retraced. The direction it took was followed slowly, yet consistently, by the English authorities.

The legal relation of the city to the state (or province) suffered no change by the English conquest. The grant from the English king to the Duke of York conferred upon the latter governmental power, including the right to appoint all officials for the province and for all settlements within the province. The city remained absolutely dependent upon the province and its authorities. The charter granted by Governor Nicolls, June 12, 1665, like the grant of government under Dutch rule, was merely an ordinance of the governor of the province, subject to change at his discretion and embodying no protection to the city or its citizens against his arbitrary acts. This charter enlarged somewhat the privileges of the city, but diminished the right of the citizens. The appointment of mayor, aldermen and sheriff was vested absolutely in the governor, with no provision like that granted by Stuyvesant, for nominations by the retiring officers. But the charter defined more liberally the prerogatives of these officials, by conferring upon them

> full power to rule and govern as well all the inhabitants of this corporation as any strangers, according to the general law of this government, and such peculiar laws as are or shall be thought convenient and necessary for the good and welfare of this, his

[1] Brodhead, I, 640, 674.

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Majesty's Corporation; and also to appoint such other officers as they shall judge necessary for the orderly execution of justice.

English rule did not at first enlarge the liberties of the people of the province or the city. It was not until 1683 that the freeholders of the province were first assembled in a legislative body. On the 17th of October, in that year, this General Assembly met at Fort James in the City of New York. It remained in session about three weeks, and passed acts of the greatest importance, including a comprehensive bill of rights. Though the Assembly was convoked in compliance with instructions from the Duke of York, yet when he succeeded to the throne in 1685 he repented of his liberal concessions. Withholding the royal charter which he had signed but not yet delivered, and which recognized the right of the people to representation, he directed the governor to disregard the Assembly and to resume with his council the power to enact laws and to impose taxes. Not until 1691, after the revolution in England and after an uprising within the colony, known as the Leisler Revolution was representative government firmly established.

The struggle for greater liberties in behalf of the province yielded its fruits to the city. The second charter, known as the Dongan Charter, was a definite advance in the direction of local self-government, enlarging both the privileges of the city and the rights of the citizens. Governor Dongan had been instructed by the Duke of York to report upon the desirability of granting to the City of New York "immunity and privileges beyond what other parts of my territory do enjoy." In the course of his official investigation, the governor received a petition signed by the mayor and the aldermen, asking that certain "ancient customs, privileges and immunities" which had been granted them in 1665 should be confirmed by a charter from the Duke of York, with some additions, such as

the division of the corporation into six wards; the annual election of aldermen and other officers by the freemen in each ward; the local government of the city to be entrusted to them and to a mayor

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and recorder to be annually appointed by the governor and council; that a sheriff, coroner and town-clerk be appointed in the same way; and that the corporation appoint their own treasurer.[1]

After prolonged discussion and delay, the complete charter was finally granted on April 22, 1686.[2]

The prerogatives of the local officials were enlarged by this charter, the grant of authority in the Nicoll's Charter being so extended as to authorize the common council

to make laws, orders, ordinances and constitutions in writing, and to add, alter and diminish or reform them from time to time, as to them shall seem necessary and convenient for the good rule, oversight, correction and government of the said city, and liberties of the same; of all the officers thereof, and for the several tradesmen, manufacturers, artificers, and of all other people and inhabitants of the said city, liberties and precincts aforesaid.

These powers would have given the city a position of great independence but for the restriction that the ordinances of the local authorities were to remain in force only three months, unless confirmed by the governor and council. This limitation reduced the local officials almost to the position of administrative agents. Yet it gave them the power to initiate local legislation, which was certain, because of their greater experience in local affairs, to ripen into ampler and ultimately full control.

The enlargement of local rights was greatest, however, in regard to the appointment and tenure of the local officials. We have seen that for a few years in the Dutch period there was a slight recognition of the "right of the citizens" in the appointment of burgomasters from names submitted by the outgoing officials, and that the Nicolls Charter had terminated this arrangement and left the appointment of all local officials absolutely with the governor. By the terms of the Dongan Charter the mayor, the sheriff, the recorder, the town clerk

[1] Hoffman, Rights of the Corporation, p. 21, notes 5 and 6.

[2] The original charter is in the City Hall. The parchment is as complete and the writing as legible as when written, and with it, but now detached, is the seal of the province.

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and the clerk of the market were to be appointed annually by the lieutenant-governor or the commander-in-chief, with the advice of the council; the high constable was to be appointed by the mayor, and the chamberlain was to be chosen annually by the mayor, aldermen and assistant aldermen. The aldermen, the assistant aldermen and the petty constables were to be chosen annually, one for each ward, "by a majority of voices of the inhabitants of each ward." In this electoral provision was a distinct recognition of the desirability of local self-government.

This charter, like all previous grants to the city, was not a royal charter, but emanated from the provincial authorities, and could be modified or abrogated by them without the consent of the people of the city. Its governmental arrangements expressed only expedients for local administration, not rights of the citizens. Yet this charter remained substantially unchanged until 1730; and within the field of local administration conceded to the officers of the city by its provisions, the provincial authorities left the local officials undisturbed. The legal right of the province was not exercised, and in its own narrow field the city was left to govern itself.

The Dongan Charter of 1686, then, is of special significance in two particulars: it marked out a certain domain for municipal activity, and it recognized to a limited extent a right in the inhabitants of the city to choose their own officials. Unfortunately, the political and charter history from 1686 does not show unvarying progress on the lines here laid down.

Following the Dongan Charter came the Montgomery Charter of 1730, which was granted directly by the king. It confirmed the previous charter, and enlarged the privileges of the municipality and increased the number of local officials, but without changing the relations of the city to the province. This charter remained the fundamental law of the city for nearly a century. The state constitution of 1777 merely confirmed its provisions, substituting for royal governor and royal council the state governor and the new council of appointment. This latter body consisted of the governor *ex officio*, and four

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senators chosen annually by the Assembly. The new constitution provided that all officers whose appointment was not otherwise ordered should be appointed by the governor, with the advice and consent of the council of appointment; and accordingly the designation of the city officials hitherto appointed by the royal governor followed this method. The constitution of 1821 abolished this system and established finally the right of the inhabitants of the city to elect their own officials. It provided (art. iv, sec. 10) that "the mayors of all the cities in this state shall be appointed annually by the common councils of the respective cities," and (art. iv, sec. 8) that "the sheriffs and clerks of counties, including the register and clerk of the city and county of New York, shall be chosen by electors once in every three years and as often as vacancies shall happen." The power of choosing municipal officers, except the recorder, was thus vested either in the voters of the city or in the common council elected by them.

Thus after nearly two centuries of struggle, with the Dutch governor, with the English authorities, and finally with their own chosen governors and legislature, the people of New York City had secured the right to choose their local officers. The abuses of the old system had become so evident that there was hardly a dissenting voice in the constitutional convention which inaugurated the new system. The historian Hammond, in his *Political History of the State of New York*, narrating the facts concerning the appointment of a mayor and a sheriff for the city, vividly portrays the evils of the old methods. DeWitt Clinton was mayor of New York City in the year 1814. The Tammany Society seemed to prefer the appointment of their Grand Sachem, Mr. John Ferguson.

> In the end Mr. Elmendorff, a member of the council [the Council of Appointment], was induced to give up his scruples about removing Mr. Clinton, and an arrangement was made by which Mr. Ferguson was appointed mayor, under an understanding that he was soon to be provided with an office [surveyor of the port] by the general government, when Mr. Radcliffe was to receive the office of mayor. Mr. Clinton was displaced, and the above arrangement was fully carried into effect.

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The exigencies of state and national politics demanded not only that the mayor of New York City — a man whom the state and the city still honor for his patriotism — be removed, and that another be put in his place, but that that other should hold the office of mayor only long enough to be appointed to a federal office!

Of the appointment as sheriff of one Hubbard, a lawyer residing in Rensselaer county, Mr. Hammond writes:

> He was irregular in his habits and improvident in his expenditures. This man, in preference to many other worthy and respectable citizens of New York, was appointed sheriff of the city and county of New York, an office with ten thousand dollars a year, which eminently required a man intimately acquainted with the citizens and their circumstances. It was given by the Council to a member of their own body, of irregular habits, insolvent in his circumstances and a stranger to the city. It was a mere exercise of arbitrary power — an insult and outrage on the city of New York which ought to have disgraced the most despotic tyrant in the eastern world. How the city of New York could have been induced to submit peaceably to this most inexcusable act is a miracle. [Vol. I, p. 399.]

II.

The year 1821 thus inaugurates a new era in the city's history. The changes of that year secured to the city one of the two indispensable conditions of self-government: its officials were to be chosen within its own limits. The other condition had already been at least partly established, but the struggle to maintain and develop it is still going on.

The powers of the city officials were defined by the old charter of 1730, which had been extended but not fundamentally altered by legislative act; and though the state legislature had succeeded to the supreme rights of the English crown, and could amend and alter the charter at will, yet it allowed the charter to remain practically undisturbed until about the year 1850. While the legislature had possessed the power to appoint and remove the city's officials at its own pleasure, it had not felt obliged to enlarge or diminish their authority from year to

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year, to suit the political exigencies of the moment or to gratify the whim or the spite of the state legislators. And for thirty years after the establishment of the new constitution, a scrupulous regard for the city's charter is shown by a study of the session laws. The charter was to the city what the constitution was to the state, and it was deemed essential that its terms should not be disturbed needlessly or frequently. The change in the attitude of the legislature was manifested slowly. As it became clear it was vigorously opposed, but the courts were obliged to hold that the legislature had the legal power to alter the city charter at will. This power had lain dormant and unused. It was at first invoked to protect the city against the misconduct of its own officials, but it was afterwards exercised in making changes without any real or even apparent cause.

During the twenty years from 1850 to 1870 the city did indeed seem to need protection from its self-chosen officials. The constitution of 1821, with the amendments in the following years, had abolished the property qualification for voters. Thus, at the same time that the city had first received the general right to elect its own officials, the constituency was increased. These changes coincided nearly in date with the opening of the Erie Canal, which increased the city's population from the interior of the state, and were followed by the beginning of ocean steam navigation and a large influx of foreign immigrants. The population of the city increased from 120,000 in 1820 to 515,000 in 1850, and the number of voters from 18,000 to 80,000, of whom more than one-half were foreign-born. The ultra-democratic wave which passed over the whole civilized world about the year 1848 left its impression on American state constitutions, and even on city charters. Amendments to the state constitution were made, abolishing all property qualifications for office-holding and for the suffrage, making judges of the highest appellate courts elective, and providing for the popular election of the governor's administrative aids — the secretary of state, the treasurer, the state engineer and even the state superintendent of prisons. At the same time New York City was to receive as well its share in the true

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democratic sacrament. Amendments to the city charter provided that the heads of all city departments, except the Croton Aqueduct, who had previously been appointed by the common council and the mayor, were to be elected by the people — a system which, by creating as many little mayors as there were heads of departments, would have produced confusion under the most favorable conditions, and did in fact make chaos in the new metropolis. The history of the years from 1850 to 1870 furnishes beyond a doubt the saddest pages of our municipal record. Dishonesty, lawlessness and violence were the characteristic features of politics in those years. The boast of the present day, that New York City at least protects the life and the property of its citizens, could not then be made, for riots were frequent and crimes went unpunished.

The first interference of the legislature with the city seems to have been prompted by a desire to protect the citizens against the continuance of these evils. When Fernando Wood was mayor, and corruption and lawlessness were almost unrestrained, acts were passed by the legislature taking away from the city its control of the police and of the fire and park departments, and assigning their administration to state commissions. Until then changes in the city charter without the consent of the people of the city had been so rare that many believed these legislative acts unconstitutional.[1] The attorney-general of the state gave an opinion to that effect; the common council of the city denied the validity of the laws, and with the mayor refused to recognize them;[2] mass meetings were held denouncing them as revolutionary,

[1] As recently as 1851 the board of aldermen had made the following declaration (which, however, was not concurred in by the board of assistant aldermen): "*Whereas*, The charter of this city adopted in 1830 as amendatory of the royal charter, as well as the charter of 1849, were both adopted by a vote of the people; and *Whereas*, Any amendments to the charter made by the act of the legislature without the formal concurrence of the people might effect a forfeiture of all the chartered rights and franchises of the city: therefore *Resolved*, That in any amendment for which application should be made under resolution of the common council, provision should be made for submitting the same to the people for approval."

[2] Mayor Wood had forcibly ejected from the City Hall one of the governor's appointees, and the latter thereupon procured a warrant for the mayor's arrest for

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and the utmost uncertainty and confusion prevailed until a decision of the court of appeals was rendered affirming their constitutionality.[1]

For a decade after the first interference the charter was still respected and changes were infrequent; but, under the inspiration of William M. Tweed, legislative action placed millions at the command of Tweed and his associates. An act of 1868, chapter 853, authorizing the comptroller to adjust claims against the city, and a modest little clause stowed away in the tax levy of 1870, authorizing the mayor (A. Oakey Hall), the comptroller (Richard B. Connolly) and the president of the board of supervisors (William M. Tweed) to audit all existing liabilities of the County of New York, were the means through which more than ten millions were secured by the Tweed Ring. Moreover, seeing the increasing wrath of the citizens of New York, this ring actually *purchased* a new charter, which contained many novel and desirable administrative features. It abolished the state commissions and gave to the mayor increased power and corresponding responsibilities. But it provided that the terms of all heads of departments should end five days after the passage of the charter, and conferred upon the mayor (A. Oakey Hall) the power to fill all these offices, not merely for the remainder of his term, but for a period of five years. This provision was unsound in principle as it was dishonest in motive. It was devised in order to perpetuate the power of the Tweed Ring, even if it should be overthrown by the people at the polls. In depriving the incoming mayor of the power to

assault and battery. Intrenched in the City Hall and surrounded by a considerable detachment of the municipal police, the mayor determined to resist service of the warrant. The result was a bloody encounter between the two factions.

[1] The People *ex rel.* Fernando Wood *vs.* Simon Draper *et al.*, 15 N. Y. The court held that "plenary power in the legislature for all purposes of civil government is the rule." The restrictions in the constitution are comparatively few, "and consist generally of those ancient limitations which are essential to constitutional government. It follows that it belongs to the legislature to arrange and distribute the administrative functions from such portions as it may deem suitable to local jurisdictions, and retaining other portions to be exercised by officers appointed by the central power, and changing the arrangement from time to time as convenience, the efficiency of the administration and the public good may seem to require."

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select his own heads of departments, it made responsibility for corrupt administration impossible.

Just as the violence and fraud under Fernando Wood first led to legislative interference, so the exposure of the frauds of Tweed and his associates stimulated the legislature to renewed activity. The charter of 1870 was followed by a reform charter in 1873. The new charter has been changed from year to year by legislative acts, at first general in character, but later dealing with minute details, and passed even without any reference to the original charter which they amended. These acts were so numerous between 1873 and 1882 that the legislature deemed it wise to pass what is known as the Consolidation Act of 1882. It was not a new charter, but only a compilation of existing laws. By 1891 the special acts for New York City had again become so numerous that it became profitable to prepare an annotated edition of this Consolidation Act. In the preface to this work [1] the author declares that

> the legislature has during the nine years since 1882 passed a number of laws, which, although relating to New York City solely, do not in terms amend any of the sections of the Consolidation Act. Many of these laws, however, supersede, modify or affect the provisions of the Consolidation Act.

To sum up, then, we find that the Montgomery Charter of 1730 remained substantially unchanged for more than one hundred years. It was modified only to conform to the changed conditions arising from the greater area and increased population of the city. For four decades more the session laws show only reasonable special legislation for the city, with the exception of the acts passed during the years from 1857 to 1860, in the administration of Mayor Wood. The legislature of 1830, for example, made only two changes in the charter ;[2] it passed some general acts for the city ;[3] but among the 337 acts of that year, none applying to New York City were private or

[1] New York City Consolidation Act as in Force in 1891. By Mark Ash.

[2] Authorizing the register to appoint a deputy (chapter 58) ; directing the board of assessors to meet annually (chapter 307).

[3] Requiring party walls to be made of brick (chapter 291) ; defining jail liberties to be south of Fourteenth Street (chapter 78).

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special in character.[1] In the acts of 1850 no change appears in the legislative practice. The charter amendments are few,[2] while all the remaining 380 laws are general in their nature, or relate to private corporations. So until after 1870, the legislative acts show the same respect for the city charter. The city had rights, which, if not valid in a court of law, were at least supported by custom, and the legislature respected them.[3] But if the Consolidation Act was needed in 1882, and if it was necessary to edit this act again in 1891, then we have indeed strayed far away from former practices.

Though the corruption exposed at the downfall of the Tweed Ring was the excuse for this legislative interference, an impartial study of the rule of Tweed must put upon the legislature much of the responsibility for the plunder and fraud. Not only did the legislature annually confirm every tax levy prepared by the supervisors under the inspiration of Tweed, but by passing special financial acts at his behest, it gave the ring unlimited control over the city's finances. Legislative interference was one of the primary causes of these crimes; but in a hopeful spirit the same action was invoked to prevent a recurrence of the evils. The necessary aid, however, was sought, not in the passage of a charter conforming to the best principles of government, but in further interference in the details of municipal administration.

[1] The legislature then incorporated societies by special act, and there were many such special charters.

[2] Chapter 187 divides the twelfth ward into two wards; chapter 330 authorizes the common council to fix the compensation of police officers and patrolmen; chapter 120 provides for the appointment of fire wardens; chapter 201 relates to the powers of the assistant surrogate; chapter 275 to those of the board of health; chapter 121 to those of the assessors; chapter 329 to those of the governors of the almshouse.

[3] The city's rights were not unlimited. In fact, until 1873 it could not impose taxes locally except by special legislative act. The establishment of the board of estimate and apportionment in the charter of 1873 secured to the city for the first time independent power over its own budget of expenditures. A legislative act, known as the Tax Levy, had always been necessary to confirm the preliminary budget prepared by the supervisors of the city and county.

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III.

The laws of 1893 do not differ materially from those of the preceding twenty years, and well illustrate to what a dangerous point this interference has extended. The statute book contains 726 chapters, of which eighty, or more than eleven per cent, refer to New York City. Special legislation for other cities of the state is proportionately as frequent. Of the eighty laws, only eight are in the nature of general acts, amending the form of government of the city. These eight provide for a new armory board;[1] enlarge the powers of the board of health (chapter 187); define more fully the powers of the commissioner of street improvements for the twenty-third and twenty-fourth wards (chapter 443); limit the salaries and the expenses of administration of the board of excise (chapter 271); define the powers of the dock department relative to the city's water front (chapter 397); modify the organization of the department of public parks (chapter 418) and of the police department (chapter 38); and make the corporation counsel a member of the board of estimate and apportionment (chapter 106).

But not even all these acts can fairly be considered general laws; only two of them make a fundamental change in the organization of the city government. The act which creates an armory board and confers on it liberal powers of expenditure, unchecked by the board of estimate and apportionment, and that making the corporation counsel a member of the board of estimate and apportionment, make changes of questionable wisdom, and of sufficient importance to have merited careful deliberation on the part of the city and the citizens whose fundamental law was affected. It is unwise to divide the responsibility for the city's budget, and no public demand existed, nor was any reason urged, for the addition of the

[1] Chapter 559, in conferring upon this body the needed power to erect and enlarge the armories, adds the unwise provision that whatever sums of money the board may determine upon as necessary for their plans, if approved by the commissioner of the sinking fund, "*shall be* assented to by the comptroller in his departmental estimates"; and the board of estimate is *directed* to include the amount in the final tax levy. And yet it is sought to hold the board of estimate responsible for the amount of the budget!

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corporation counsel to the board of estimate and apportionment, except that, as the mayor's legal adviser, his opinion was frequently needed. Yet the change vitally alters the composition of the board. It had consisted of four members, of whom three, the mayor, the comptroller and the president of the board of aldermen, were chosen by the people, and only one, the president of the department of taxes and assessments, was appointed by the mayor; by the addition to the board of the corporation counsel, who is named by the mayor, the latter with his two appointees can control this important body against the votes of two officials elected by the people. This board was created by the charter of 1873 after careful deliberation; the financial budget up to that time required an act of the legislature for its confirmation, much doubt existing as to the advisability of conferring so much power on the municipality. There was no provision of the city charter more fundamental than this, and yet it was amended vitally without special reason and without popular demand from the city electors.

Twenty-five of the acts of 1893 were of a private nature, amending charters of charitable and public institutions within the city; authorizing the cancellation of assessments and of sales of property made for non-payment of assessments;[1] releasing certain associations from taxes;[2] and giving authority to the board of estimate and apportionment to pay special claims.[3] Such legislation is very dangerous, and altogether unjustifiable.

The general powers of the board of estimate and apportionment include the right to determine finally the budget for the

[1] Chapter 288 cancels the assessment on the property belonging to St. Joseph's Orphan Asylum; chapter 588 refers to the House of the Good Shepherd, Hebrew Orphan Asylum and St. Luke's Hospital.

[2] Chapter 324 releases from taxes R. C. Church of the Blessed Sacrament; chapter 325, St. Andrew's M. E. Church; chapter 667, Southern N. Y. Baptist Association.

[3] Chapter 649 authorizes the board to examine and pay the claim of Matthew Ellis, arising from the furnishing of bread to the city prison between *January 1, 1885, and January 1, 1886;* chapter 530, to pay Charles S. Walker's salary as janitor of the 10th District Court; chapter 513, to make an additional award to Essie Miller.

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city, and this power involves now a sum annually in excess of $30,000,000. Much of this amount, such as the requirements for the interest on the city debt and for the city's quota of state expenditures, cannot be altered by the board. The legislature has, moreover, by special act fixed certain expenditures, such as the salaries of heads of departments and bureaus. Yet the board retains control over at least one-half of the amount annually appropriated — a sum not less than $15,000,000. It should not be necessary to pass special acts authorizing the insertion of certain items in this budget, such as an appropriation of $50,000 additional annually for the Museum of Natural History, on condition of opening on Sundays (chapter 31); or an appropriation of $70,000, on similar conditions, to the Museum of Art (chapter 476); or the sum of $200,000 annually, from 1894 to 1897, for the improvement of parks in the twenty-third and twenty-fourth wards. Such authority is and should be included in the general power of the board of estimate and apportionment; for its control of the many millions of the budget is only rendered more dangerous by dividing the responsibility for all city expenditures with the legislature or any other body.

It is also questionable whether it would not be better to permit the board of estimate and apportionment, or some other local board, to issue city bonds for certain general purposes, and to a limited amount annually. No local board has any authority to issue bonds even for the smallest amount. The control which the board of estimate now has of a budget of many millions, and the additional expenditure of millions annually under legislative acts authorizing the issue of bonds, involve greater financial power than an act authorizing the annual issue of bonds, not in excess of a fixed sum, for public and permanent improvements. Such an authorization would prevent the undertaking of public works except upon action by the local authorities, who would be responsible for them as for any other expenditures. Among the special acts of the legislature in this field in 1893 were those authorizing the enlargement of the Museum of Natural History, and an issue of

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$400,000 bonds therefor (chapter 448); providing for the opening of an aquarium in Castle Garden, and an issue of $150,000 bonds therefor (chapter 250); permitting an appropriation of $50,000 for the Columbian celebration, and an issue of bonds therefor (chapter 280); and authorizing the issue of $1,000,000 for new school buildings, and $250,000 for the improvement of the sanitary condition of the school buildings. Not only do such special acts frequently give opportunity for improper expenditure, since the city's officials shift the full responsibility to the state legislature, even though the acts are only permissive, but it is only a short step from permissive to mandatory legislation. And so we find the legislature of 1893 commanding the department of public parks to construct what is known as the Harlem River Speedway, to be paid for by city bonds. This act imposed upon the city, at a cost of several millions, an improvement which had encountered so much opposition that the city officials would not have dared to undertake it under a permissive act of the legislature. By such legislation the citizens are burdened with a permanent public debt, created without their sanction, and even against their will.

Among the local acts of the session under consideration were many dealing with details of administration that are, or should be, within the control of the local officials. Such was the law directing that all sales at public auction shall take place between sunrise and sunset, except under certain conditions (chapter 289); that permitting the transfer of unexpended balances from one bureau to another in the same department (chapter 186); and that authorizing a change of grade in certain streets (chapter 223). If the passage of such acts is necessary, the city government is shorn of its most essential powers. A special law (chapter 517) provides that no contractor repaving the streets may encumber the sidewalks with paving-stones, except under license from the commissioner of public works, and then only for a space not exceeding 800 feet in length, and of a width that will not obstruct the use of the sidewalk by pedestrians. No better example could be found of the interference of the

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legislature in petty affairs of local administration; for no one can question the right of the common council to make such an ordinance, or the power of the commissioner of public works himself, by a special clause in the paving contracts, both to make such requirement and to enforce it.

Such interference does not stop at merely unnecessary legislation; it is but one step to unwise and vicious legislation. What can be said in defense of an act which directs the cancellation of assessments, judicially determined by a proper commission, against whom no charges were ever made? Yet a lawyer with political influence, related to an important city official, secured the passage of an act (chapter 526) for the relief of the property-holders to be benefited by the opening of Mulberry Bend Park — an act which was simply a gift of city money by the legislature to certain favored real-estate owners.[1] No less questionable was the act (chapter 267) which ostensibly deals only in a general way with the board of street opening, authorizing it to acquire needed title to open streets in the twenty-third and twenty-fourth wards,[2] but in a subsequent paragraph confers power on the commissioner of public works

to grant a license or privilege to the street sprinkling association [*not printed in capitals*] for the sprinkling of all streets, avenues, roads and public places under his jurisdiction aforesaid, with water from the public supply for a period not exceeding *ten* years, subject to such reasonable rules and regulations and the payment of such annual sum as he may determine, but not less than the amount now received by said city for said privilege.

[1] The newspaper most in sympathy with the political organization that controls the city government thus states the facts in the case: "Michael J. Mulqueen, Mayor Gilroy's son-in-law, and his brother, forming the law firm of Mulqueen & Mulqueen, got the assessed owners for clients and first persuaded the board of estimate and apportionment to cut the sums in half, and afterward succeeded in getting the legislature to repeal that clause of the law. The repeal was passed a year ago, not in the last legislature." — *New York Sun*, June 12, 1894.

[2] The title of this act is: "An act to amend chapter 410 of the laws of 1882, entitled 'An act to consolidate into one act and to declare the special and local laws affecting public interest in the City of New York,' relative to the opening of streets, roads and avenues in the twenty-third and twenty-fourth wards and the department of public works of the City of New York."

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Acting upon this the commissioner of public works, without any delay, on April 26, 1893, made a contract with the Street Sprinkling Association, giving it the exclusive right to water the streets of New York for a period of ten years (excepting only the streets sprinkled by the park department, and the twenty-third and twenty-fourth wards), for an annual payment of $28,000. A most valuable privilege was thus conferred on a private corporation, and no limit was set to the charges which this company might make on the householders, who must either dispense with street sprinkling or submit to what it may demand. The comment upon this act by one of the New York City newspapers is entirely just:

> Another way by which the tax payers of this city were robbed of money by the last legislature is revealed now in the working of the new Street Sprinkling Law. Heretofore the streets have been sprinkled by a private corporation who bought of the city the right to use the city waters for that purpose over certain districts. As the bidding was competitive, the amount which the city received was increasing each year. On the day that bids for this year's sprinkling were to be opened a bill was passed at Albany which empowers the commissioner of public works to award a contract for ten (10) years for sprinkling the streets to the Street Sprinkling Association, composed of seven contractors who had held sprinkling rights during the last year. This association put in a bid of $28,000 a year for ten years, and their bid was accepted. As this right is said by impartial judges to be worth at least $50,000 this year, and to have a steadily increasing value, the contractors have got an uncommonly "good thing" at the expense of the city.[1]

Of the eighty special local acts under consideration only twenty-four contain any reference to the Consolidation Act of 1882, though most of them, except the private acts, amend it. Such methods add uncertainty to the other evils of legislative interference.

No more need be said to show how far we have strayed from the original conception of a city charter as an act which embodies the city's fundamental law, to be amended only by

[1] *Evening Post*, May 30, 1893.

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special reference to the original provisions and after careful deliberation. The modern practice gives the amplest opportunity for the practice of covert fraud. The city officials can frequently with justice charge local misgovernment to the legislature, for that body frequently imposes duties and large expenditures without their consent; and, on the other hand, when they want to accomplish an improper end, they can secure special legislation for the purpose, and thus escape the blame for an act which they are willing to connive at, and yet are not bold enough to commit. Millions can be misappropriated, as in the days of Tweed; or, as in later days, a "speedway" can be secured when city moneys are most needed for parks in overcrowded districts; incompetent officials can be maintained in office, as in the board of electrical control (which should be controlled by experts); or corrupt "deals" may be arranged by relieving property owners from assessments which they should pay, and by giving away valuable franchises for street sprinkling or for street railroads.[1]

No one can speak with greater authority on municipal government than President Seth Low, and he was led to say concerning legislative interference that it was his greatest anxiety while mayor of Brooklyn.

> The charter of a city, coming as it does from the legislature, is entirely within the control of the legislature. Just as there is no legal bar to prevent the legislature from recalling the charter altogether, so there is no feature of the charter so minute that the legislature may not assume to change it.
>
> In the state of New York there is no general law touching the government of cities, and the habit of interference in the details of city action has become to the legislature almost a second nature. In every year of his term the writer was compelled to oppose at Albany—the seat of the state legislature—legislation seeking to make an increase in the pay of policemen and firemen without any reference to the financial ability of the city or the other demands upon the city for the expenditure of money. Efforts were made, also, at one time to legislate out of office some of the officials who

[1] A late conspicuous case of this occurred in connection with what is familiarly known as the "Huckleberry Street Railroad franchise" for the annexed district.

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had been appointed in conformity to the charter. New and useless offices were sought to be created, and the mayor found that not the least important of his duties as mayor was to protect the city from universal and adverse legislation on the part of the state.

It is not too much to say, however, that the greatest anxieties of his term sprang from the uncertainties and difficulties of this annual contest — on the one hand to advance the interest of the city, and on the other to save it from harm in its relations to the law-making power of the state.[1]

IV.

Will the proper recognition of the city's privileges and the rights of the citizens better these conditions? The problem of the government of cities has engaged the earnest thought of all public-spirited citizens and students of public law; for it is in the large centers of population in this country and elsewhere that government by the people is at present undergoing its severest trials. Nowhere are the difficulties greater than in New York City. It is the largest city in the Union, with a population in excess of 1,500,000; including Brooklyn and Jersey City, it is a metropolis of more than 2,500,000 people; many of its inhabitants are foreign-born or the offspring of foreign-born; its wealth is almost unlimited, and its budget is larger than that of many a state in the Union: yet since 1821 it has followed the broadest ideas of democracy in its government. The struggles toward good and honest administration which the history of New York City records in this time deserve the careful consideration of the students of municipal government everywhere. Its problems will become the problems of other cities when population increases or democratic institutions are introduced.

This history of New York City since 1821 will show a gradual advance, at least, toward the establishment of public order, and a growing appreciation of the importance of public improvements. Public water supply, public schools, and a well organized police and fire department to replace the volunteer service are characteristic features of this development. But

[1] President Low's chapter in Bryce, American Commonwealth, vol. i, p. 630.

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the sad history of the Tweed Ring is too well known to be concealed, and the corruption from time to time exposed by the grand jury or by legislative committees keeps ever before us a picture of brutal dishonesty, which makes many despair of democratic institutions in large cities. In the last decade, however, societies devoted to municipal reform have sprung up in all the larger cities of the Union, and in the past year the City Club of New York has begun an active and vigorous effort to maintain an ideal for the government of great cities. These societies insist — and there have been no differences of opinion among them — that the affairs of a great city involve no political questions, and that they should be administered without regard, therefore, to political considerations. The cleaning, paving and lighting of city streets, the maintenance of public order, the administration of the docks, the development of the public schools, and all other purely local matters should command the attention of citizens without regard to national party affiliations. Differences of opinion in regard to the tariff or the currency should not divide public-spirited citizens on such subjects.

To accomplish this complete separation, the elections for municipal offices should be held at different times from state and national elections; but it is equally important that the city officials, who must be chosen solely for their ability to administer local affairs, should not be interfered with by the state in the discharge of their duties. To prevent legislative interference in the details of administration, these organizations are urging the incorporation of this provision in the state constitution:

> No city shall hereafter be incorporated by special law. The legislature shall enact general laws for the organization and government of cities under an appropriate classification, so that cities of the same class shall possess similar powers and be subject to similar restrictions. Cities heretofore incorporated and organized may become organized under such general laws whenever a majority of the electors of any such city voting thereon at any special or general election shall vote in favor thereof; and such general laws shall make provision whereby the question of the organization of any such city

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under the general law applicable thereto may from time to time be submitted to the electors therein.

When any city shall have organized under a general law, no law thereafter passed by the legislature for a municipal purpose shall take effect in such city unless the same be accepted and approved by the local authorities thereof. The legislature shall provide by appropriate legislation methods by which a city organized under any general law may amend its charter, subject to the provisions of the constitution.

No law hereafter passed by the legislature for a municipal purpose shall take effect in any city heretofore organized unless the same be accepted and approved by local authorities of such city.

The adoption of such an amendment to the constitution will require a definite understanding of the meaning of the words "municipal purpose" and of the sphere of local and state government. Though it is generally conceded that the cleaning, lighting and paving of streets, the maintenance of the public parks and markets and the prevention and control of fires, for example, are purely local duties, many contend that the maintenance of public order by the police should be a state function, and many more believe that the preservation of the public health and the development of the common school system are state ends and should be within the control of the state legislature. The limit of local and state jurisdiction should be defined, and when once ascertained, interference by special laws should be rendered impossible.

This proposed amendment would reëstablish the city's charter, and coupled, as it would be, with the right of the citizens to choose their own officials, would finally secure to New York City municipal independence. It should be remembered that the saddest experiences of the city date from a time when the state legislature was chargeable with much of the responsibility, and that the experiment of home-rule has never been tried. By it alone can the city government be effectually separated from state and national politics; and all are agreed that this separation is indispensable to the best results in municipal administration. But there can and should be retained an

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administrative control over the city's officials. The governor, either with the legislature or with the judges of the highest courts, should have the right to impeach and remove all city officials, as now he has authority to remove the mayor, sheriff and other local officers, for corrupt administration or for failure to perform their public duties;[1] and the state authorities should always have the right to investigate the administration of local affairs. Such a provision, if coupled with the proposed constitutional amendment, would leave supreme control with the state authorities, without interfering with the ordinary administration of municipal affairs by the local officials. The city would finally secure its privileges and the citizens of New York the right to enjoy them. Perhaps a civic pride would be aroused sufficient to induce another United States senator to resign his office in order to fill the more important position of mayor, and the glory of the days of Hamilton, Jay, Varick and DeWitt Clinton might return.

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[1] The constitution of the state provides, article 10, section 1, as follows: "Sheriffs, clerks of counties, including the register and clerk of the City and County of New York, coroners and district attorneys, shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen. . . . The governor may remove any officer in this section mentioned, within the term for which he shall have been elected, giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense." In the Laws of 1873, chapter 335 extends the terms of this provision to the office of mayor. The law provides: "The mayor may be removed from office by the governor in the same manner as sheriffs, except that the governor may direct the inquiry provided by law to be conducted by the attorney-general; and after such charges have been received by the governor, he may, pending the investigation, suspend the mayor for a period not exceeding thirty days."

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THE LAW OF THE ADMINISTRATION IN AMERICA.

WHETHER we regard the intrinsic interest of the subject or its practical importance from a political point of view, it must appear as remarkable that that branch of the public law which deals with the organization and action of the government in its administrative department has, until a very recent time, received so little attention from English and American jurists as not even to be distinguished by a commonly accepted name. There seems to be a general impression that what we call constitutional law covers the whole field of the action of the government in its legal aspect. Nor is this impression altogether unfounded. Our constitutions regulate an ever-increasing number of matters with ever-increasing particularity of detail, and our courts place such a liberal construction upon the constitutional rights of liberty and property, that questions of constitutional law, which in Europe are apt to be confined to the relations between the different departments of the government and to be settled by the balance of political power, in this country enter constantly into the exercise of governmental power over the individual, and are brought before and passed upon by the courts. Even in America, however, the constitutions leave to the legislature considerable liberty in determining the scope and the manner of governmental action, and the great mass of statutory legislation is safely within the limits of legislative discretion. Of the public statutes which are passed every year, only a small portion relate to private or criminal law; the largest number regulate, in some respect, the administration of the government, creating official powers or duties. However unsystematic and chaotic this legislation may appear to the superficial observer, it must, in the nature of things, follow certain uniform principles and forms, and the relations thereby created

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must raise corresponding legal problems. The body of law which is thus developed regulates and limits governmental action without involving constitutional questions. Its subject matter being the administration of public affairs, as distinguished from legislation on the one side and from the jurisdiction of the courts on the other, it has been aptly called administrative law.[1] It is to be hoped that the term will become more familiar to the public, and especially to the legal profession, than it is at present, and that the subject itself will become one of the recognized branches of public law.

As long as constitutions shall differ in their scope, the line between administrative and constitutional law will fluctuate, and in many cases we shall be at liberty to assign a question to the domain of the one or of the other, according to the point of view which we may adopt. So we should be inclined to speak of a question of constitutional law wherever the issue is directly between liberty and sovereignty — between individual right and governmental power — whether the issue arise upon a direct conflict between the two, or upon a question of giving the individual a share in the constitution and conduct of government, or upon a question of organizing government with a view to securing the integrity of liberty and property. We should speak of a question of administrative law where merely the legality of official action is involved, because the government may be in no wise committed to the support of the officer's claims of authority; also where the fiscal rights and liabilities of the government are in issue, because in this sphere it does not represent sovereign power; so also, as a rule, the question of remedy against the government belongs to administrative law, since the constitution, even where it defines rights, rarely points out the means of enforcing and protecting them. In all countries the organization of the local divisions of the state, the distribution of functions between central and local government, the creation of offices and the determination of their several spheres and mutual

[1] Prof. F. J. Goodnow has recently published a systematic work with the title: Comparative Administrative Law (New York, Putnams, 1893). *Cf.* vol. i, p. 7.

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relations, are left to legislation, either entirely or with few exceptions, and all these matters may therefore be regarded as belonging to administrative, not to constitutional law.

The distinction becomes even clearer when, leaving aside purely legal criteria, we observe the development and formation of the two branches of the public law from a historical or political point of view. So, without touching the form of government or the powers of the crown, Prussia instituted fundamental administrative reforms; so, amidst an incessant fluctuation of governments, dynasties and constitutions, France has shown the most astonishing stability in its administrative organization as established by the first Napoleon; so in England, until the recent local government acts brought a slight reaction, the administration had been centralized and largely stripped of its self-governmental character, while the political constitution was steadily developing in the direction of democracy; so the two greatest modern republics, the United States and France, represent the opposite extremes of administrative organization.

As the science of administrative law is new and has been chiefly developed in France and Germany, it is natural that the attention of the American student should be turned to foreign law. This is all the more justifiable and proper, as the administrative problems in the various countries are in many respects similar, and the experiences of one country have been utilized in the reforms of another. The administrative system of England has been more profoundly studied by a German — Professor Gneist — than by any Englishman; in fact, Gneist was the first to explain the underlying system in the chaotic mass of statute law that had accumulated for centuries. Gneist's works on English administration have had a great influence upon German legislation, and the local organization of Prussia presents now the most ingenious solution of the problem how to combine bureaucracy and self-government, — one of the most important political problems of the present day. The administrative system of France is a model of logic and simplicity; it illustrates the possibilities of artificial and

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deliberate, as distinguished from historical, organization. The symmetrical and harmonious structure of the system appears to be a real element of strength from the administrative point of view, whatever may be the political effects of the system on the capacity of the people for self-government. England, on the other hand, shows in its local divisions the baneful effects of a development left to the accidents of unsystematic legislation according to the needs of the moment — a development which has resulted in a "chaos of authorities, of rates and of areas," and which has favored the natural tendency towards bureaucratic centralization.

To the American student an acquaintance with the foreign law will reveal the interesting fact that, however diverse the systems of the European states may be, they appear almost uniform when compared to our own system. While many of our institutions may find parallels in Europe, our administrative system seems to be unique. We may, for the sake of convenience, speak of an American system; its most peculiar features, however, do not appear in the national government, but in that of the states, which in this respect are all substantially the same. We find here a development which is entirely original, and in which the democratic spirit of our institutions is most perfectly realized. In no part of the government has there been such a radical change from the European models which the makers of our first constitutions had before their eyes, as in the executive department, in which the sovereign power comes into closest contact with the citizen. Especially in the organization of the central administration, the European standards of comparison fail almost entirely. The contrast between our commonwealths and the European states is all the more instructive because the functions of internal administration, which are determined far more by the progress of civilization than by political theories, have in all countries alike a tendency to grow and assimilate, and because therefore the ends which are thus pursued by the most dissimilar methods are substantially similar. This contrast may be described as follows:

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In the European states in which the monarchical rule prevails or in which its traditions are still powerful, the administration is constituted in such a manner that its organs appear as a distinct portion of the state and of the people. The chief executive stands as the representative of governmental power; he is the head of an army of officials who derive their functions and duties directly or indirectly from him, whose hierarchical organization culminates in his person, who have received a special training, who serve the state for life, and whose interests are therefore to a large extent identified with those of the government, and somewhat dissociated from those of the people in their capacity as subjects. The government appears as a distinct organization in the state; though the mass of people, having in modern times received a share in the administration of public affairs, now coöperate to some extent with the professional bureaucracy in the conduct of the government. This system may be designated as bureaucratic government.

Such an organization of a separate and permanent body of officials, connected by professional traditions, by an *esprit de corps* and by different grades of subordination culminating in one central chief, is believed to be contrary to the American conception of popular government. Our theory is this: not only are the people the source of governmental power, but they exercise that power themselves. They exercise it through officers taken out of their own number, who assume public functions for a short and definite term, and then rejoin the ranks from which they have stepped temporarily, thus never losing their contact with the people. The powers of these officers differ in degree and in territorial extent, but a higher degree of official power does not necessarily mean the right of direction or control over a lower office in the same sphere. Not only are the officers of the government not separated from the people; they are not organically connected with one another; they are held together only through their common allegiance and responsibility to the people. This system may be designated as self-government, because the difference between rulers and ruled is reduced to a minimum.

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In its influence upon the principles of administrative law the most important aspect of the system of self-government is the lack of organic connection and concentration of the different offices which constitute the administration. This distinguishes the executive from the other two departments of the government. The legislature is naturally a close organization; the judiciary consists of a comparatively simple system of courts, exercising inherent and partly undefined powers, and the higher courts have appellate or supervisory control over the lower. But the administrative department has no such coherence; and this is due partly to constitutional provisions and partly to legislation. In this respect the opposite course of development in the states and in the federal government, owing to different constitutional powers, is extremely instructive.[1] The growth of the administrative powers of the President of the United States until they amount at the present time to a substantial direction of the national administration, has been due largely to his qualified power of appointment, and still more to the absolute power of removal enjoyed by him except during a comparatively short interval. A vigorous and timely use of the power over the official *personnel* gradually and insensibly established a concentration of the control of administrative functions, and a strong executive naturally became the depository of extensive delegated statutory powers. Of course the peculiar sphere of a federal administration aided this development very materially.

In the states, on the other hand, the powers of the chief executive over the *personnel* of the administration were from the beginning more qualified, and were subsequently narrowed by constitutional changes. But the functions of the chief executive that remain after the powers of appointment and removal are taken away, are under our state constitutions political, not administrative. The clause which provides that he is to see that the laws are executed, is little more than a phrase, conferring not a single specific power and sanctioning merely the

[1] The tracing of this development forms one of the most interesting and valuable parts of Professor Goodnow's work. See vol. i, pp. 53–66.

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privilege of issuing proclamations or writing letters warning officials to do their duty. It certainly does not involve a supplementary ordinance power. Unless, therefore, the legislature was willing to vest large administrative powers in the chief executive, he was bound to become what the constitutions had fitted him for by the express powers conferred upon him — the political head of the government. Now the legislature, while it has to some extent increased the executive power of appointment, has withheld from the chief executive all the functions of control, direction and review, which in Europe and also in our federal government hold the administrative organization together. Still less has the legislature vested general powers of administration in the chief executive with the understanding that he might delegate their exercise to subordinate officers. On the contrary, the laws are framed in such a manner that the duty of executing their provisions is laid upon ministerial officers directly, and upon them alone; that is to say, each officer has his specific and independent jurisdiction. It is interesting to notice the contrast with the French system. Even where the law in France directs an act to be done by the prefect, his official duty to act comes through the channel of executive instruction: the minister is under legal obligation to direct him to act, but the prefect's duty of obedience is first to the minister and only indirectly to the law.

The advantage of our system is clear: the allegiance and responsibility of every officer is to the law; we may truly speak of a government by law and not by men. But we should also see the true effects of such a system with regard to the chief executive authority. The officers of the administration are not bound to the chief executive by their tenure; for they do not necessarily hold by his appointment or subject to his power of removal. Nor do they owe him obedience or any regard whatever; for their duties are not derived from him nor liable to his control. There is no subordination on the part of the lower organs of the administration. But in that case there is no unity in the executive department. If the chief executive has no administrative functions of his own, and does not really

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stand at the head of those who exercise these functions, the executive is not a coördinate branch of the government with the legislature and judiciary, all constitutional declarations to the contrary notwithstanding; if there is a conflict between the enunciation of a general principle and the special provisions which govern actual relations, it is the latter and not the former which constitute the true law. This system compels the legislature to specify in detail every power which it delegates to any authority. No discretion as to scope of action or choice of means can be allowed to subordinate officers without superior control, and the hierarchical organization necessary for such control does not exist. The legislature must also regulate the exercise of official powers in every particular, not because the minute regulation is of the essence of the law (as it is, for instance, in the protection of the ballot), but because the officer has no one to look to for instruction and guidance except the letter of the statute.

Thus we arrive at the fundamental principles of our administrative system: no executive power without express statutory authority — the principle of enumeration; minute regulation of nearly all executive functions, so that they become mere ministerial acts — the principle of specialization; and specific delegation of these functions to separate officers — the principle of diffusion of executive power. In contrast to these we find in Europe executive powers independent of statute, discretionary powers of action and control vested in superior officers, and the concentration of the administrative powers of the government through the hierarchical organization of the executive department. The federal executive in the United States, like that of the commonwealths, has only enumerated powers, but there is to some extent a power of direction vested in superior officers, and its organization is hierarchically concentrated. The federal administration, therefore, stands closer to the European types than to the system prevailing in the commonwealths.

Professor Goodnow, in the work already cited, arrives at similar conclusions with regard to the local administration in our

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states;[1] but in this restricted application the peculiar principles of the American administrative law lose much of their characteristic meaning, and the contrast to the European systems largely disappears. So especially with regard to the principle of the enumeration of powers, it is true that our localities have on the whole only such powers as are expressly granted, while in Germany and France an inherent right of local autonomy is recognized. But this right does not generally extend beyond communes and municipalities[2] and with regard to them it is being constantly narrowed by the statutory regulation of nearly every subject of public importance — local constitution, taxes, building regulations, streets, schools, poor relief, *etc.;* and while the statutes leave the regulation of details to the localities to an extent unknown in this country, the autonomy thus enjoyed is no longer inherent, but delegated. On the other hand the range of enumerated powers in this country is, with regard to municipalities, often so wide as to give them almost if not quite the same degree of autonomy that is enjoyed by French and German towns and cities. The difference consists chiefly in this, that the corporate capacity in Germany and France embraces the power to use the municipal resources for the establishment of public institutions and enterprises, such as markets, gas and water works and street railroads, while in this country such powers are not given by general delegation. But this results more from the narrower legal conception of corporate capacity than from a deliberate restriction of local self-government, and as far as such restriction expresses deliberate legislative policy, it is due to the great jealousy with which our law guards the exercise of the taxing power.

A further dissent may here be expressed from Professor Goodnow's view that to this principle of enumeration is to be attributed the centralization of local matters in the hands of an irresponsible central authority, *i.e.*, the legislature. It seems to me that the cause of this unfortunate tendency in our system

[1] Vol. i, pp. 223–231.

[2] The French department, *e.g.*, has only those powers which are expressly enumerated.

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must rather be sought in the principle of specialization and diffusion of powers, or, as Professor Goodnow calls it with reference to the localities, in the administrative independence of the local authorities. Under the European system many powers are granted to the localities, the exercise of which is conditioned upon the approval of some superior controlling authority; in the absence of such authorities these powers are under our system simply withheld, and if their exercise is desired, application must be made to the legislature. In Europe, general laws are supplemented by executive ordinances, which can be varied from time to time, and with reference to the needs of different localities; under our system this task, again, devolves upon the legislature. The want of powers of direction and control in higher executive authorities is thus the real cause of the administrative over-activity of our legislatures, with its attendant evils. These evils appear in their worst form in the legislative interference with local self-government, especially in cities. The remedy that suggests itself most readily is a constitutional restriction of legislative power, and some states have attempted to check special legislation in this way. But the prohibition of special local acts does not and should not forbid the legislature to classify localities and to legislate for each class. This power has been abused by creating classes which in fact cover only one locality. But even without abuse it may be justifiable and necessary to class one exceptionally large city separately; so the cities of New York, Baltimore, New Orleans and San Francisco in their respective states might be practically withdrawn from the operation of the constitutional restriction, and the evil would continue unchecked precisely where the remedy was most needed. A constitutional restriction of this kind, in order to be effective, should therefore at the same time establish a classification of municipalities for purposes of legislation. Suppose, however, that the further step should be taken, and legislative interference be barred by granting a constitutional right of local autonomy; the remedy would be worse than the evil, for this would be the creation of an *imperium in imperio*, and the unity of the will of

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the state would *pro tanto* be destroyed. In either case, the question would be proper: What should be substituted for the lacking power of the legislature in the exercise of a necessary and legitimate control over local government? The real difficulty lies in the absence of supervisory organs. What is to be regretted and condemned is not the power of interference vested in the legislature, which may be necessary in emergency cases, but the habit of interference which is born of and nourished by the causes indicated.

The principle of specialization and diffusion of powers without executive direction or control imposes upon the legislature functions which are really administrative. While the forms of legislation are preserved, the restriction to specific official authority or to one locality may so narrow the scope of a statute that it becomes in reality an administrative act. The legislature thus becomes in a certain sense the central administrative authority of the state — a position for which it is altogether unfitted. Executive action is in its nature responsible, because the officer who directs is also bound to see how the direction is carried out, and because the executive authorities are subject to the control of the courts or to impeachment; legislative administration, however, is both legally irresponsible, because the legislature is not amenable to any direct control, and morally irresponsible, because it is beyond the capacity of a large body to act intelligently on matters in which it has no interest. The only safeguard lies in the fact that the chief executive has a voice in legislation: as an organ of the legislative power he exercises the functions which properly belong to his sphere, and his watchfulness is expected to check the action of the legislature.

The action of the legislature as a central administrative authority, if it keeps within the forms of statutory legislation, cannot go further than the operation of a statute; that is to say, it is limited to the granting and withdrawal of powers and the imposition of duties. The legislature has other powers, not consisting in legislation proper, by which it can affect the administration of the government: the powers of impeachment

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and investigation; sometimes a control over the tenure of high executive officers; always and everywhere the power of taxation and of appropriation. Through these powers it exercises a strong political control over the executive department of the government. But a further control is needed to hold subordinate officers to the performance of their duties and to protect private rights. For either of these purposes any form of legislative action must fail entirely, and resort must therefore be had either to the higher organs of the administration itself, calling into play what is known as "administrative control," or to the courts, invoking "judicial control." As it is one of the chief objects of administrative law to enforce legal action on the part of all organs of the administration, both in the interest of the government itself and in the interest of private rights, it is important to observe how the difference between the European and the American system of administration affects these methods of control.

Administrative concentration means administrative control. Graduated subordination of offices under one executive chief centers in the latter the ultimate responsibility for all official acts, and gives him the corresponding power to hold all officers to the performance of their duties. As far as the danger of official neglect and misconduct on the part of subordinates is concerned, this is the ideal kind of control; for it operates constantly through organs constituted for that very purpose, and keeps awake in every officer the sense of immediate and certain responsibility. This is the only possible control where the discretionary action of subordinate authorities is questioned on the ground of wisdom and expediency; for what is needed in such a case is a repeated opportunity for consideration, and the exercise of judgment on the basis of greater experience and at some distance from local interests or prejudices, and these desiderata can be supplied only by the higher administrative authorities. This kind of control is liable to fail where questions of fact or law arise between the administration and private persons; the issue between public interest and private right should be decided with absolute impartiality,

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and the administration may be expected to lean in favor of the public interest. In this class of cases, therefore, the impartial control of judicial tribunals is more appropriate. The administrative control must fail, again, where the executive government in its highest organs is opposed to the enforcement of the law: the issue is then political and requires the action of other governmental powers. As long, however, as the citizens have no reason to distrust the administration of the government in its entire organization, the administrative control is adequate for ordinary purposes, and certainly affords the speediest and most efficient relief; although, as a matter of principle, the possibility should be left open to the individual to appeal to an impartial tribunal for the protection of his rights. In Prussia, where the citizen has the option of appealing on questions of right either to the higher administrative authorities or to the courts, there are said to be ten cases of administrative to one case of judicial appeal.

Now the organization of the administrative system of our states excludes for the most part, if not entirely, the methods of administrative control. The national administration stands again in this respect nearer to the European systems than to the system of the states. In the latter the cases where an appeal lies to higher administrative authorities are few and decidedly exceptional, as they must be where there is as a rule no official subordination. The power of removal from office vested to some extent in the governors of many states may of course be used to control the action of the officers who are subject to it: but removal is not apt to be resorted to except in cases of public interest; it does not remedy the wrong done; and where it is allowed only for cause, the requirement of specific charges makes it impossible to reach many cases of remissness or incompetence, which in ordinary relations of subordination can be easily dealt with.

In fact the absence of administrative control in the states must be regarded as a deliberate principle of legislation, and as a vital part of the general scheme of keeping the executive power as weak as possible. The idea underlying our system

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is that every officer is responsible to the law, and that for the enforcement of the law the courts are sufficient. The judicial control must therefore serve both purposes: it must enforce the performance by officers of their duties to the public, and it must protect private rights. For the former purpose the action of both the criminal and the civil courts is called into play. An attempt is made to secure the responsibility of the officer by making a violation or dereliction of duty on his part a misdemeanor. This method is open to the same objections that have been suggested against the governor's power of removal: the machinery of the criminal law is too cumbrous and weighty to be used on small occasions, and the penalties may be out of proportion to the offense. It would be absurd to punish every case of official misconduct with imprisonment. Besides, it is fallacious to believe that the criminal liability creates a complete judicial control; for in this country official monopoly of criminal prosecution is the rule, and therefore no case can be brought before the criminal courts, if the district attorney, or perhaps the attorney-general, that is to say, a member of the administration itself, is unwilling to act or to push the prosecution in good faith.[1] To make this criminal control complete there ought to be some possibility of criminal prosecution independent of the organs of the administration. Far more important is the indirect control of criminal and police courts where the administration itself is compelled by law to invoke their process in order to enforce its penalties. This control, however, operates exclusively for the protection of private rights.

The civil courts may be resorted to against administrative action both by way of redress in damages for wrongs done, and by way of specific relief to prevent or correct illegal action. This latter kind of relief constitutes in this country the most important method of control over the administration. It may be used by the administration itself to secure the observance of the law on the part of its officers. At the same time, however, any citizen interested — in the case of a purely public

[1] See Professor Goodnow's remarks on this point, vol. ii, pp. 184, 185.

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interest probably every citizen — may institute the necessary proceedings, so that the administration does not enjoy the same monopoly of controlling the enforcement of the law as in criminal prosecutions. This relief is also granted for the protection of private rights, and is in some respects more valuable than the redress in damages, which is not allowed against the government itself and which is apt to be of little avail against financially irresponsible subordinate officers. The forms in which this relief is given deserve especial consideration. The usual remedies, *mandamus*, *certiorari*, *quo warranto* and *habeas corpus*, constitute a species of extraordinary jurisdiction which historically became vested in the courts, not as the regular organs of the administration of justice, but as the organs of the king in supervising his officers. Moreover they are altogether anomalous in their legal aspect, consisting in prerogative writs, issued as a rule in the discretion of the court, in the name of the people, and each available only for certain specific classes of illegal action. The fact that the people are a formal party to proceedings which may be controlled by private individuals, raises questions so far undiscussed, but which may spring into great importance at any moment. How far is the judgment conclusive? Does it bind the formal party, the people, *i.e.*, everybody, or only the actual party, the relator? If it binds the people, what protection is there against collusive suits instituted to protect rather than to defeat the illegal action of the officer? If it binds only the relator, is the discretion of the court an adequate protection against a vexatious multiplicity of suits? It is clear that in this matter some reform would be very appropriate; some provision should be made requiring notice to the representative of the public, the district attorney or attorney-general, in all cases where the public interest is involved, while in cases of purely private interest the forms of a private action should be substituted. This seems to be the logical course of development; by such a reform we should lose a most interesting historical survival of ancient forms of remedy, but from every other point of view the change would be a distinct gain.

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Even as it is, however, the extraordinary jurisdiction by means of prerogative writs constitutes a judicial control, which, in one respect at least, compares favorably with that of the administrative courts of France and Germany. Whatever the defects and peculiarities of the remedy, it is administered by regular judicial tribunals, while in France and Germany claims arising out of the administration are adjudicated by special courts, which are connected with the administration and, with the exception of the courts of last resort, are not entirely independent. The organization of such courts is due in France to the principle of the separation of powers; in Germany they are justified on the ground that civil judges are not well qualified to deal with questions of public law, and that purely judicial reasoning is not sufficient to determine a conflict of public and private rights. In answer to these arguments it may be said that it is perfectly proper to demand that the administration should keep strictly within the bounds set to it by law, and therefore the most vigorous scrutiny of its action, from a purely legal point of view, should be invited rather than excluded; and as far as qualification is concerned, all that can be required is a legal training and a judicial habit of mind, and the regular courts, at least in this country and in England, have been found perfectly capable of dealing with questions of public law. The German and French system, however, has the advantage that in the place of remedies of extraordinary technicality it provides simple forms of action and, as far as possible, an informal procedure; it also directs disputes to be decided according to equity rather than strict law, — a principle which is apt to operate in favor of the individual rather than of the administration. Above all, however, it should be remembered that the citizen has the right to seek redress by appeal to a higher administrative authority, so that he can in many cases save his rights without the expense, delay and risk of litigation. On this showing the means of control for the protection of private rights really appear ampler and more efficient under the European than under the American system.

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The greatest drawback of our system, however, lies in the fact that it makes no provision for the review of discretionary action — that there is no chance of reconsidering the question of expediency. It would be dangerous to vest such a power in the courts, although it has been done in some instances; for the power to decide between conflicting interests is not judicial in the proper sense of the term, that is to say, it is beyond the control of objective rules, and the habitual exercise of such a power would necessarily impair the attitude of judicial neutrality, and would eventually undermine the confidence of the people in the courts of justice. The question of expediency must be reviewed with the same freedom with which it was originally considered, and therefore must be left to other administrative authorities: there is necessary, in other words, administrative control, and this is impracticable where the administration is not organized with a view to its exercise.

The impossibility of reviewing questions of expediency must inevitably produce this result, that the law will narrow as much as possible the sphere of discretionary action on the part of the administration. Instead of vesting its organs with power to decide between conflicting interests and to determine by their own judgment the course to be adopted according to the circumstances of the case, the law will fix precisely and completely the conditions under which the administration must act in a certain manner. Compliance with these conditions will place all individuals upon a basis of equality, and the administration is bound by fixed rules which are controllable and enforceable by the courts. This feature, as far as it can be applied, does away with the necessity of an administrative control. The tendency to frame administrative statutes in this manner is constantly growing, especially in the matter of granting and withholding licenses, franchises, *etc.*, and it is manifest not only in this country, but in Europe as well. On the other hand, the progress of civilization creates new spheres of administrative action in which the exercise of discretionary powers is indispensable. On this point the sanitary police may be mentioned as the most important illustration. Some

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provision for reviewing questions of expediency will, therefore, remain a desideratum of American administrative law.

I think sufficient has been said to show how far-reaching in its effects upon the principles of American administrative law is the system of self-government, in so far as it means the lack of subordination of the lower to the higher organs of the administrative department and generally the lack of organic connection between the different offices. Perhaps of less legal importance, but of equal interest, is that other aspect of the system which relates to the character of the official *personnel* and the tenure of offices, and which we may designate as its non-professional character. The two features of self-government do not necessarily accompany each other; the administration may be hierarchically organized and yet its members may not be professional office-holders. This is the case in our federal government, and in Europe the offices which are filled with non-professionals are not on that account withdrawn from the control of higher authorities, although some degree of independence is of the essence of self-government. On the whole, however, non-professional tenure of office and administrative independence on the one side, and hierarchical organization and professional office-holding on the other, go hand in hand. In the discussion of this distinction a contrast is sometimes made between professional and honorary offices.[1] The term honorary, while it expresses the ideal aspect of the system, fails to make allowance for its possible development in practice. The system, it is true, is based upon the idea that the conduct of government should enlist the voluntary services of the greatest possible number of citizens, so that each may realize from his own experience the claims of public interests; that the inducement to enter the service of the state should be a sense of civil duty, and the only reward, the credit and honor attached to it. If this idea could be carried out, the lower degree of technical efficiency might indeed be greatly over-balanced by the political advantages of the system. But the question is: Can the idea be carried

[1] So Goodnow, *op. cit.*, ii, 7.

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out in any government? Evidently one of two conditions must be present: Either the duties to be performed must be very simple and easy, and must not require continuous service or exclusive devotion to their performance — a condition which, as to the greater portion of administrative offices, exists only in rural government; or there must be a large number of citizens of wealth, leisure and sufficient public spirit to take an active interest in the administration — which was the case in Rome, and to a large extent in England. Neither of these conditions is applicable to the great majority of places in the civil service of a modern state, which are clerical and technical in character. If in filling these positions the non-professional character is insisted upon, either service must be made compulsory, or — and this is the almost inevitable course — it must be paid. But if office from a place of honor is turned into a place of profit, the system of self-government loses its most valuable feature, the moral independence of the officer. The principle of rotation will fail of its intended effect; it is bound to become an instrument for partisan purposes. Self-government, instead of meaning administration by the people, will mean administration by parties, or rather, since party differences have little meaning in the lower offices, administration by politicians. The office-holders will come to form a separate class of the community, just like the bureaucracy in Europe, only without the same training and experience. Instead of professional office-holders there will be professional office-seekers. This development is sufficiently familiar; it shows that the application of non-professional administration to all offices would have none of the political advantages claimed for self-government — that there is a large branch of the civil service to which the professional system alone is suited.

If this is true, the proper adjustment between the two systems becomes a question of great interest, and the example of the European countries in which the official organization unites both features is very instructive. The Prussian administrative reforms have introduced a most thorough and system-

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atic combination of bureaucracy and self-government. France has only recently developed self-governmental features in her administration; while in England the tendency has rather been towards an extension of bureaucratic methods, — a natural reaction from the former extreme application of the principle of self-government. In all three countries this principle has found its most fruitful field in the local administration.[1] The bureaucratic system still rules supreme and almost exclusive in the central administration. Here the self-governmental principle is represented chiefly by the legislative bodies. The function of deliberating, advising, and approving or rejecting certain lines of policy seems indeed one especially appropriate for non-professionals, and the people will also naturally claim for their direct representatives a share in the control of the finances.

Opinions will probably differ most as to the proper method of filling the higher executive offices. In favor of the bureaucratic system it may be urged, in addition to the advantages of training and experience, that the government should have in some part of its organization a permanent element, and that this is most naturally the executive; it is indeed remarkable that in our government the executive is in this respect at a disadvantage compared to the legislature, which has at least the continuity of a body in which governmental custom and tradition can become firmly settled. On the other hand, a frequent change of the executive head of the government or of any of its departments means an infusion of fresh blood into the management of affairs, while professional training and ability in such a position is perhaps less necessary than executive ability. This applies, however, only to high executive offices with principally political duties. The English system, which regards only the very highest offices as subject to rotation and all others as professional, probably strikes the right mean. The question as to the best organization of the

[1] In view of this fact we are especially indebted to Professor Goodnow for giving, in his late work, a full description of the local organization of England, France and Prussia.

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civil service belongs only partly to the administrative law; very largely it must be left to the policy or practice of the executive power. By prescribing qualifications for the holding of offices the law can make them professional in one sense, *i.e.*, by securing the proper training and knowledge. To make them professional in tenure, to make office-holding a career for life, the law would have to make officers irremovable except for specific causes — a course which has been adopted in Germany. Where the law does not do this, life tenure will become at most a matter of usage, which may, however, practically give the security of a legal life tenure; this is the case in France and England. As regards appointive offices, the administration may therefore have it in its power to organize the civil service on a professional or on a non-professional basis, and the law may go no further than to encourage the one or the other tendency. The federal statutes prescribing a definite term for most offices encouraged the principle of rotation, without making it absolutely necessary; and the present civil service reform acts, by qualifying the power of appointment without touching the power of removal, again merely encourage, without prescribing, a more permanent tenure of office. By making an office elective, however, constitutional or statutory legislation can fix its non-professional character; for cases in which technical qualifications are prescribed for eligibility are naturally rare, and the requirement of election at stated periods excludes the idea of life tenure. The extension of the principle of election to judicial, technical and ministerial offices, such as those of county clerk, register or sheriff, has therefore firmly impressed upon the administrative systems of many states the non-professional character. It would require a profound change in popular sentiment to bring about the substitution of bureaucratic systems in the administrative organization of these states.

On the whole, I think that a general comparison of the American and the European systems of administration plainly shows a technical superiority on the part of the latter. This in itself affords no conclusive reason why our system should

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be changed after any European model. Professor Goodnow expresses a generally recognized view when he says that technical efficiency is not the only and not the first consideration in the administrative organization. Political causes and effects will always profoundly affect administrative problems, but this aspect belongs to the science of government rather than to administrative law.

It is a different question, and one as to which speculation is more justifiable, how far the present administrative system of the American states will be able to retain its peculiar features unimpaired, in view of the constant and inevitable expansion of the sphere of modern state activity. This must extend the province of administration as well as of legislation. Our present system is the product of an extreme democratic spirit, combined with a comparative simplicity of the conditions of government in the early history of the states. The spirit of democracy seems at the present time to seek different methods of asserting itself from those chosen in the first half of the century; and simplicity must necessarily give way to more complicated conditions with the progress of material civilization. The purpose of the framers of our state constitutions appears to have been to keep the government as weak as possible, but the strength of the government must grow with the expansion of its functions. With a change of the conditions that have made the present organization possible, the organization itself is liable to undergo important modifications. The direction of these modifications is indicated by present tendencies of legislation. New branches of administration have developed, and the departments in whose charge they are placed show at least some degree of centralization. In newly created offices there is a manifest tendency to revert from the principle of election to that of appointment; the civil service laws are putting a check upon the practice of rotation in office; above all, the changes in municipal government indicate a decided departure from the principle of loose and weak organization, and an approach to the forms of bureaucratic government; and the city only demonstrates

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most typically the problems characteristic of the administration of the modern state. But the growing strength of the administration incident to its more compact organization is apt to be balanced on the other side by a curtailment of its discretionary functions, so that the increase in administrative activity is likely to be greater than the increase in administrative power over the individual.

The similarity of the tasks that devolve upon the state in every highly civilized country leads to a corresponding similarity in the tendencies of administrative law. As it has been found advisable in Germany for political reasons to offset the power of the bureaucracy by the independence of self-government, so in our system it is becoming necessary, for administrative reasons, to modify an exclusively self-governmental organization by an infusion of bureaucratic or professional elements. The result in each case is a combination of the two features. There is no danger at present that we shall ever fall under a highly centralized and bureaucratic administration like that of France, but the example of England shows that historical foundations and tradition alone cannot be relied upon to ensure the maintenance of pure self-government. It is to be hoped that in the institution of needed administrative reforms in America the experiences of the great European states will not be altogether lost upon our legislators.

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ASSIMILATION OF NATIONALITIES IN THE UNITED STATES. I.

WHO and what is an American?

We are familiar enough with the question whether nationality is determined by place, blood or allegiance. We are informed that originally it was determined by blood, that is, by tribal relationship. In early history a Frank was a member of the Frankish tribe; England was Angle-land, the land of the English; the kings were kings of the people, and John was the first to assume the title *Rex Angliae*. As nations acquired fixed abodes and territorial limits corresponded with the extent of political authority, residence in a country and allegiance to a sovereign became elements in the notion of nationality. An Englishman was ordinarily a man of English blood, living in England and owing allegiance to the King of England. A foreigner might, of course, live in England and not be an Englishman, just as an Englishman might live abroad and not lose his nationality. But such cases were exceptional; in the great mass, blood, residence and allegiance united to constitute nationality.

The progress of events has gradually destroyed the simplicity and obviousness of this conception. In confederated states question might arise as to the relative prominence of the local or the central allegiance. In the days of the weakness of Germany a man might have been more conscious of the fact that he was a Prussian or a Bavarian than that he was a German. Even at the present time, while the Prussian king is German Emperor, it may be doubted whether all his immediate subjects feel that they are first Germans and then Prussians.

The establishment of colonies which were intended to be something more than mere trading-posts or factories, made a breach in the notion of residence as necessary to nationality.

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An Englishman settled in America was still an Englishman by blood and allegiance, but he called himself an American on account of his residence. American, on the other hand, could mean nothing as to blood or allegiance, because there were Americans of many different nationalities and subject to different sovereigns. When the allegiance came to be thrown off, one more element in the notion of nationality was lost. The colonist was obviously no longer an Englishman, except by descent. He was an American; American, however, denoting neither blood nor allegiance, but simply place. The Indian, who owes his ordinary appellation to an error of the geographers, was the real American. The term might be applied to a variety of persons; it might be applied to the inhabitants of any portion of the three Americas. It is a designation without meaning as to blood, although we sometimes try to make it more definite by a qualifying prefix, expressing descent, such as Spanish-American, German-American. The term South-American is in general use with us, although, curiously enough, we do not apply the corresponding term North-American to ourselves.

In fact, the people of the United States have, in a certain sense, appropriated the title American to themselves. We, the people of the United States, think of ourselves as "the American people." Doubtless this is partly due to the impossibility of forming an adjective or a noun referring to the people as distinguished from the territory of the United States. To some extent, moreover, it may be looked upon as a justifiable usurpation by the most important independent state upon the continent of America. The term thus applied to the people of the United States includes evidently the elements of place and allegiance. As to blood, it covers four races — the White, Indian, Negro and Chinese, and a great variety of nationalities — English, French, German, Dutch, Spanish, Italian and others, among the original colonists or the later immigrants. These elements have not remained isolated, but have coalesced so as to form an apparent unity which we think of as the American people. It is true, also, that this is not

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altogether a mechanical union, like that of the particles of a mosaic, which are placed side by side so as to form a unity of design, but which can be broken off and separated. There has been, as is so often said, a chemical union, of which the original elements can be determined by analysis but can never be restored. The descendants of the Englishman of Massachusetts and the Dutchman of New York are no longer separable in blood, in feeling or in mode of action. They are neither English nor Dutch, but American. In the same way, will not all the other elements which have been introduced, and which are being added at the present time, coalesce so as to form a unity which will be a real ethnical unity and constitute a real American people?

This question has often been answered in the affirmative, but with little thought as to the character of the process and the result which will be attained, or which it is desirable to attain. Many content themselves with the mere assertion that the American of the future will be a combined Englishman, Frenchman, German, Italian, — perhaps even Negro and Chinaman, — and that he will unite the good qualities of all these peoples, and thus be superior to any one of them. The exponents of this idea do not explain why the good qualities should survive and the bad disappear. Others seem to look upon American institutions as a sort of mill, into which all sorts of grain may be thrown and from which the best of flour will invariably come out. They do not consider what would happen if we run in a lot of chaff, or even a little dynamite occasionally. Such idealists pay no regard to any theories of the mixture of races, either biological, sociological or historical; but the real question of interest is in regard to the process by which such mixture is brought about and the character of the product which is formed.

The optimistic view that the mere mixture of races and peoples will of itself produce a superior type has no scientific basis in anthropology and ethnology. In the first place, because the anthropologists have as yet reached no satisfactory definition of race, tribe or people. They are not yet agreed

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whether man constitutes one species or several species, or as to the number and characteristic marks of the races of man. There are numerous mixed races; but as to whether these tend to perpetuate themselves, or to be lost by inter-crossing, or to return to the parent type, the anthropologists are uncertain. The sub-divisions of races, such as tribes, families, stocks and peoples, are equally difficult to define. We use the term race sometimes to cover them all, as we speak equally of the Caucasian race and the Irish or the Anglo-Saxon race. Anthropologists differ as to the physical characteristics which are to be employed to distinguish race. Sometimes it is color of skin, sometimes quality of hair, sometimes shape of the skull; but none of these has proved entirely satisfactory. With such uncertainty in the use of terms, it is impossible to predicate anything of the "mixture of races."

In the second place, anthropologists are uncertain as to the physical effect of the crossing of races. If races are true "species," then by biological analogy half-breeds should be hybrids, that is, sterile or of a low degree of fertility. Much labor has been unsuccessfully expended in the effort to prove that such is the case. It cannot be shown that crossing even between such extremes as the whites and the Africans is infertile. It can, however, be affirmed with some plausibility that such crossing is almost always reinforced by renewed crossing with the parent stock; so that we cannot say with certainty that such half-breeds, if left to themselves, would be perpetuated. This very doubt shows how absurd the affirmation is that mixture of races in itself results in a superior race. Even where we cannot deny the fertility of the crossing, the half-breeds seem to tend towards the condition of the inferior parent. They have nowhere in the world produced a high civilization. The experience of the United States confirms this view. Neither the Indian half-breed nor the mulatto has approached the white parent.

It may be said, however, that by the mixture of races we do not mean these extreme cases where physical differences offer such obstacles to successful crossing, but the mixture of

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different stocks of the same great family, as the Germanic and Keltic stocks of Europe. Here we have a mixture of peoples who are distinguished not by color or marked physical differences, but by social organization and character. Sociology has a theory for these cases, but it does not support the optimistic view that such mixture is invariably good. Spencer says that where the elements are very unlike, there results an unstable equilibrium, although small differences seem favorable, by allowing room for modifications necessary to social progress. But from this theory it is merely begging the question to conclude that the mixture of Irish and French-Canadians with the old stock of New England will produce a high civilization. Are the elements sufficiently alike to unite in the main points while allowing room for heterogeneity in minor points? That is the thing to be proven.

Driven from the anthropological and the sociological theories, the optimists have recourse to what may be called the "historical" theory of the mixture of nationalities. They say that as a matter of history all the great civilized nations are composed of a variety of elements which, if not distinct races and peoples, are at least distinct nationalities. They point to the English, composed of the Anglo-Saxons, the Danes and the Normans. They point to the invigorating effect of even a slight mixture of Norman blood, which was of the same race and stock as the Anglo-Saxon and Danish, upon the history of England. Here, too, it is not so much the mixture of blood, as the effect upon institutions and national character, that is of consequence and that is favorable to social progress. The Normans were not numerous enough to effect much by intermarriage; but by their capacity for administration, by the introduction of the French language, by their international relations, they affected profoundly the development of England.

But this historical argument, again, is quite fallacious. Not all mixtures of nationalities of which history gives us an account have resulted in social progress. Few territories have seen a greater variety of nationalities than Sicily, one of the most unhappy countries in the world. Everything depends upon

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the way in which the mixture is brought about and the elements which are involved. A conquering nationality may bring its civilization to an inferior people, and good may result. Or the conqueror, superior in brute force but inferior in culture, may adopt the civilization of the conquered, and advance be made in that way. Or the antipathy between the conqueror and the conquered may be so bitter that no approach is possible, and the result is constant disunion, distraction and weakness. Before we can affirm that a mixture of nationalities will prove fruitful, it is necessary to examine the character of the process and the nature of the elements which it is proposed to unite.

It is my purpose in this and the following article to make some observations in regard to the character of the process of mixture of nationalities which is going on in the United States. By mixture I do not mean necessarily an actual mixture of blood, but an assimilation of institutions, character and customs by which these different elements shall gradually be fused into one nationality, or one body — the American people.

It is evident that the accomplishment or failure of this fusion will depend upon the strength of the particularistic forces associated with, or latent in, each nationality, as compared with the strength of the assimilating forces to which they are all subjected and which tend to reduce them all to one type. Any one familiar with the history of the United States is aware that these assimilating forces are very real and very powerful, and that in thousands of cases they have overcome the strongest national peculiarities and habits. This greatly simplifies our study. On the face of it the problem is one of convergence and not of divergence. We can devote ourselves to a study of the forces tending to assimilate, leaving the opposing forces to be treated as opposing forces, indeed, but of minor importance. We may assume for the purposes of the argument, at least, that a nationality is being formed in the United States, and may consider the forces which are propitious and the chance these have of making themselves felt.

There are, now, three great forces which tend to assimilate men of different races or nationalities living in the same

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territory and under the same government. These are intermarriage, physical environment and social environment. The first is, of course, a powerful assimilating force: but it either shatters upon social prejudice, as in the case of the union of blacks and whites, so that the result is retrogression rather than advance; or it is difficult to trace, owing to the lack of statistics, as in the case of the whites of different nationalities in the United States. It will, therefore, be omitted here, and we shall confine our attention to the last two.

Influence of Physical Environment.

Before going on to the direct effect of physical environment, there are one or two peculiarities about the process of assimilation of nationalities in the United States which deserve to be noted. They affect both of the forces mentioned above.

It must be confessed that the mixture of races and nationalities in the United States has differed in one important respect from those which have taken place previously in history. In former times the process has almost always taken on the form of conquest. The conquerors have occupied the superior position, and have had the opportunity to impose their institutions, or at least the form of them, upon the conquered. Often the conquered have been reduced to the condition of slaves or serfs, and have not been able to oppose the process of amalgamation except through the power of passive resistance and the force of numbers. In the United States the mixture has been a peaceful process. The colonies were settled by different nationalities, but all these colonies came into the Union on an equal footing. Since that time immigration has brought representatives of all nations, but they have all been treated alike and as on the same level with the original settlers. There has been no war of races or nationalities. There has been no subjection of one nationality to another. Each has had an equal chance to make good its own position and to influence national development. There has been no compulsory amalgamation, no imposition of the institutions of one

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nationality upon the others, no forced union of blood. The one great exception to this has been in the case of the negro, who has suffered all these things through the institution of slavery, and the consequence is that we have the unique negro problem. But among the whites there has been practically no distinction of nationality or blood or social condition.

The importance of this lies in the fact that thereby all three of the assimilating forces mentioned above have had free chance to work. In former times this was not so. Where the one nationality felt obliged to keep itself apart as a sort of military garrison, it was able to resist for generations even the pervasive influence of climate and physical environment. It did this by keeping up strict military discipline, and by refusing to adopt the manner of life, the occupations and the amusements which were suited to the climate, and which would have gradually moulded the conquering people to the same type as the indigenous inhabitants. We have such examples in oriental countries, where conquerors from the north have long maintained their superiority by keeping themselves separated and under strict discipline. Sooner or later the climate makes itself felt, but the process of assimilation is long delayed. In the United States the physical environment has had free chance to exert its influence. There has been no reason why men should resist it for the purpose of maintaining their dominant or distinct position. On the contrary, adaptation has been the surest and quickest way of reaching influence and power. The desire to retain old habits out of allegiance to the mother country has been absent, because such allegiance even in the form of colonial dependence has been lacking. Many of the immigrants have, indeed, made haste to drop costumes, customs and habits of life which reminded them of servile conditions at home or were badges here of their foreign birth. It is astonishing how quickly after their arrival here the peasants of Europe abandon their picturesque habiliments. They adapt themselves to the climate and to the occupations and habits of life suited to the climate. Physical environment becomes thus a powerful assimilating influence, tending to

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reduce men of all nationalities to one type, and that the one already prevailing.

It is scarcely necessary to add that peaceful settlement is most favorable to the working of the other force, namely, social environment. Men will not adopt the institutions or habits of life of their enemies or rivals if they can help it. We have numerous examples in history of small fractions of populations preserving their social peculiarities because of their traditional relations of hostility to the ruling majority. Such has not been the case in the United States. No nationality has felt itself obliged to maintain its national customs in defiance of the rest of the community, and as an indication of its independence. We have had no irreconcilable fractions, simply because no one has attempted to coerce any fraction. One cannot long maintain an attitude of defiance where no person threatens. Religious and other leaders have sometimes attempted to keep up a certain amount of isolation among particular bodies of immigrants by maintaining the foreign language and habits of life; but even when such attempts are successful for awhile, they generally fail with the second or third generation, which yields to the dissolving influence of social environment.

A second remark may be made in this connection which is of similar import. This is the fact that the coming of nationalities to the United States has been in the form not of organized bodies of men but of isolated individuals. This was true even in the days of colonization. It is still more true of immigration. If the millions of Germans who have come to this country had come in a body, or even if they had come successively, but in organized form and directed by a state power, they would have formed a compact and homogeneous body which would with difficulty have yielded to any assimilating force. The same number of individuals scattered through the community lose the resisting power which association with their countrymen gives. Owing to lack of organization they succumb to the influence of physical and social environment. It is this fact that makes the question of

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immigration different from that of conquest and of colonization and renders the process of race mixture different in the United States from any preceding historical example. There is another aspect of this question, namely, whether a mass of individuals thus left free to themselves, and not subject to the restraining and directive force of tradition and social ideals, can or will develop any great social power or form a good basis for any system of social ethics; but this does not concern us here. For the moment we are concerned only with the chance which the assimilating forces have of making their influence felt, and we can see that in the case of immigration the chance is a very good one.

From the above considerations we should expect that physical environment would have an assimilating effect on the different nationalities brought under its influence in the United States. We have now to expose the elements to be assimilated, to define what we mean by physical environment, and to explain the method of measuring the effect of the assimilating process.

The population of the United States in 1890 consisted of the following elements:

Total Population	62,622,250	100.00%
Colored	7,638,360	12.21%
Native whites of native parentage .	34,358,348	54.87%
Native whites of foreign parentage .	11,503,675	18.37%
Foreign whites	9,121,867	14.56%
Total of last two	20,625,542	32.93%

We have here elements of great importance in the constitution of the population and differing widely from one another. In no other country in the world do we find such peculiar elements existing side by side and giving rise to such questions of ethnology and sociology. Here we have bodies of men differing in race, in birth-place, in parentage, in social condition, in political traditions, in ethical consciousness, — all brought under the influence of the same physical environment and political and social constitution. In this great ethnical and sociological conglomeration, what basis have we for social peace and harmonious social progress? No nation

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has ever faced such a problem before, or, at least, — if we involuntarily think of the Roman Empire, — no nation has ever sought to solve it by means of peaceful development under the régime of liberty.

From whatever point of view we look at them, these elements have very different significance. The first, the colored, I do not propose to treat of here. The effect of physical environment is peculiar, inasmuch as race seems to fit them for those portions of the South which are less favorable to the whites. Slavery and climate, while concentrating the negroes in the South, have had a complementary effect in directing white immigration to the North, and this has had an important influence on the political and social history of the United States. The blacks have been subjected to the influence of social environment, but rather in the way of an inferior race which has had institutions thrust upon it without any action of its own, and with only a limited capacity for appropriating them. On the other hand, they are native-born Americans and the only civilization they know is American civilization. Hence they are not so much an alien as a peculiar element, separated from the rest of the community by an ineradicable mark, and yet inseparably bound to the community. With the mark of slavery still upon them, with popular prejudice arrayed for the most part against them, with the conflicting opinions as to their capacity for intellectual development, and with the uncertainty as to the effect of liberty upon their energy and morality, it is impossible to predict how and when the negroes are to be assimilated to the white population of the United States.

The negro is native born. There are two other native-born elements. These are the native-born of native parentage and the native-born of foreign parentage. The first is the most important element in our population both as to number and quality. They constitute 54.8 per cent of the total population. They are what we call the American element proper. We think of them as descendants of the original colonists, or at least of those who helped to establish the American common-

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wealths and to give an impress to American institutions. We think of them as far enough away from their European origin to be uninfluenced by former traditions, and to be the unconscious or conscious bearers of whatever is peculiar to American life. This, of course, is not altogether true. We can trace the distinction of place of birth back only two generations. Among these persons of native birth and native parentage there are many grandchildren of immigrants, and there are some who are still imperfectly adjusted to American life. But on the whole it is a homogeneous body, and to this body the others of more recent arrival tend to be assimilated, if to any. It includes the true Americans, so far as that term can be defined statistically.

Next to these are the native-born of foreign parents. These are the second generation of the immigrants, so to speak. They are foreigners by extraction, but they are American by birth. They form an important element, over eighteen per cent of the total population, and more important still they stand half-way, as it were, between the native and the foreign element. They are not the descendants of the colonists, nor do their American traditions run as far back as those of the previous class. On the other hand, they are not actually foreigners, nor are they fresh from the influences of the old world. Many of them are as completely American in their sentiments and allegiance as any descendant of the Puritans. They represent the process of assimilation in the act, as it were, and form a most interesting subject of study. For if by any means we can measure their social characteristics and character, we have some indication of the rapidity and completeness of the process itself.

The last element is the whites of foreign birth, the immigrants. This is the real element to be assimilated. They constitute 14.5 per cent of the whole. Upon their number and quality depends the difficulty of the process. It is in them that we seek indications of tendencies and characteristics which may offer obstacles to the harmonious development of our institutions and social life. This is the foreign element

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proper, constantly recruited by immigration and constantly diminished by deaths and emigration. It is the renewal of this element by immigration that gives to the problem its importance by making new demands upon the forces of assimilation. This last element is not by any means homogeneous. There are members of this class who came here in childhood, and who nearly approach those who were born here of foreign parentage. There are some who are at once absorbed into the current of American life and who scarcely remember that they are foreign-born. But statistically this is our nearest approach to a measurement of the foreign element, and it can be treated as such.

There are two ways of manipulating these last figures which give us rather interesting measurements of the intensity and character of the foreign influence, so far as it can be done statistically. One is to combine the foreign-born and the native-born of foreign parentage. That gives us a total of 20,625,542, or 32.9 per cent of the total population of the United States, who either by birth or by parentage are foreigners. This may be said to represent the total foreign influence, the foreigners of two generations, and may be contrasted statistically with the native-born of native parentage, who represent the true American element. This figure is of importance, sometimes, for it shows how in certain localities almost the entire population is foreign in this sense. In the North Atlantic division, for instance, the two elements together constitute 47.3 per cent of the total population. In the Northwest they constitute 43.2 per cent. In some of the states the proportion is still greater. In Massachusetts it is 56.2 per cent, and in Rhode Island 57.9 per cent. The largest proportion is found in cities. For instance, in the city of New York those of foreign birth and of foreign parentage are 82.3 per cent of the total population. In Milwaukee the two foreign elements form 85 per cent of the total, and in one of the rural counties of Wisconsin 90 per cent of the population are of foreign birth or of foreign parentage. In such communities the power to resist assimilation would seem to be at its maximum.

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The second manipulation consists in contrasting the foreign-born with the native-born of foreign parentage. These latter are the immigrants of the second generation. They are not to be looked upon as wholly foreign, for they have been subjected to the influence of American life. It is evident that the relative proportion of these two elements is of considerable importance in measuring the task of assimilation. For if a considerable proportion of the whole foreign element consists of this second generation, then the task of assimilation is partly in the way of accomplishment; while if the whole or a large proportion consists of newly arrived immigrants, then the work is just begun. It is interesting to notice that for the whole of the United States the second generation already exceeds the first; for the native-born of foreign parentage constitute 18.3 per cent of the whole population, while the foreign-born constitute only 14.5 per cent. One curious thing is that, while in the Eastern states, such as Massachusetts and Rhode Island, the first generation still outnumbers the second, in some of the Western states which we think of as peculiarly the home of the immigrant, the second generation outnumbers the first. The following are specimen percentages:

	Foreign-Born.	Natives of Foreign Parentage.
Massachusetts	29.19	27.09
Rhode Island	30.69	27.29
Wisconsin	30.77	43.09
Minnesota	35.87	39.80

These figures indicate the recent immigration into the Eastern states, and indicate just as clearly the greater task which the Eastern states have before them in assimilating the foreign-born. Many interesting contrasts of this sort are shown in different parts of the country.

Such being the elements with which we have to deal, how shall we conceive of the physical environment which we have named as one of the assimilating forces?

The most powerful influence of this sort is, to my mind, what may be termed the "frontier life," which has been the

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peculiar factor in the development of this country. From the beginning the settlers have been obliged to carry on a persistent struggle with nature and with savage foes. The colonists were left almost entirely to their own resources in this great struggle. They developed a spirit of self-reliance, a capacity for self-government, which are the most prominent characteristics of the American people. This frontier life has continued on the plains and in the mining camps of the great West down almost to the present time. Many of the immigrants have been subjected to this influence with precisely the same results as were felt by the original colonists. Even where the frontier was pushed westward, and the contest with Indian and wild beast ceased, the struggle with nature remained. There were forests to be cleared, virgin soil to be cultivated, roads to be built and all the appliances of civilization to be introduced. The immigrant became a pioneer of civilization wherever he settled. And he was obliged to carry on the work under American conditions, namely, the paucity of labor, the use of machinery, the lack of capital and use of credit, the introduction of methods best adapted to the task, and the whole under the stress of keen and active competition. The immigrant was forced to abandon the traditions of the old world and to do his share in inventing new devices. These conditions were universal, and constituted a most powerful force, tending to assimilate all comers to the type which had been found by experience to be most fitted for the problem in hand, namely, the conquest of a continent.

It is this struggle to attain the material resources of life, so often alleged as an excuse for the slow development of literature and art and the refinements of life among us, which has been the great secret of the ability to assimilate foreign elements. This struggle was felt by all classes, while the intellectual and artistic influences would have been felt, perhaps, by only a few. It was the primary condition of living which was forced upon all, and to which all were obliged to conform. The hardships of frontier life, the rough discipline of the mining camp, the stress of competition, may have had their

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share in eliminating those who were too weak or too unadaptive to find a place in the organization, but this only aided the process. The physical environment was unyielding, and claimed its right of all comers. The new continent was to be settled, but it imposed its own conditions, which could not be evaded, and the more pliant element, man, was forced to conform and to fit into the conditions of living.

It may be remarked, in passing, that this assimilating force, which has so powerfully influenced our past history, tends to become less prominent with the settling up of the country. The frontier life is largely a thing of the past. The best land has been taken up. The conditions of living over a great portion of the country are similar to those of Europe. A larger and larger proportion of the population live in towns and cities where these primitive influences are not felt. In this respect each succeeding generation of immigrants escapes more and more the immersion into the chilly but bracing waters of a social life where each man counted for what he was worth. It was in many respects a cruel test, yet the opportunities were great, and the reward for the survivors correspondingly great. The assimilating power of the outward life was something tremendous, for it developed a character as the basis for social progress in comparison with which differences of nationality and past tradition were trifling. Now the immigrants find here men of their own race, organizations of labor, people speaking their own tongue, newspapers in their own language; in many directions they find support and comfort and aid. They sink into positions already opened for them, and they find an environment suited to their previous habits; but it may be doubted if the outcome is as good for them or for the country as the struggle under the old conditions. In this respect the physical environment, as an assimilating power, is a diminishing force.

When we come to inquire into the details of the influence of physical environment upon the different nationalities which have settled in the United States, we are met with difficulties of exact analysis. Under physical environment we include the

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influence of climate, of geographical position, of fauna and flora, of mineral resources, of commercial position, of the character of the soil, *etc.* But these factors are so numerous and various in the United States that it is impossible to trace their direct effect. Only in one respect are our statistics suggestive, namely, that if we take the distribution of the foreign-born in respect to these things, we shall find that it corresponds closely to that of the majority of the native-born whites. Slavery was the historic reason that immigration directed itself to the Northern states rather than to the South. The climate, also, has corresponded more closely to that of the countries from which the majority of the immigrants came. Hence, we find the foreign-born distributed through the Northern states and thus subjected to the same influence of climate and geographical surroundings as the native-born whites. This comparison may be carried out in many directions. If we take altitude above the sea, we find that the largest proportion of the whites live at an altitude of between 500 and 1000 feet, and the proportion for the foreign-born is almost the same. If we take temperature, we find that a majority of the whites live in a mean annual temperature of between fifty and fifty-five degrees, and the foreign-born are found there also. So in the same way in the distribution according to topographical features, by drainage basins, by rainfall, according to humidity, we find the same correspondences. The importance of these facts is perhaps not very great. They only show that whatever may be the assimilating power of physical environment, the foreign-born are subjected to the same influences as the native whites.

The most difficult task is to find some measurement of the exact effect of physical environment upon man. Here we have to consider first of all the direct effect of climate, *etc.*, upon the physical constitution of the individual man. There is no doubt that such an influence does exist. In regard to America some very extreme views have been announced. Some authors contend that the peculiarities of the American climate are such that it is producing a race very different from any in

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Europe.[1] And some go so far as to assert that climate will in time approximate all the inhabitants of North America, both white and black, to the type of the American Indian. They see already in the loss of color, the lengthened extremities, the sunken temples and the narrowed pelvis of the Yankees the beginning of this process. This is probably an extreme view; for the effect of physical environment is much less upon civilized man than upon the savage. But there is little doubt that climate develops in America diseases and nervous disorders, a restless energy and other physical and mental traits in which the foreign-born also participate. Medical statistics may some day give us fuller information upon this subject. In the same line would be statistics of births and deaths among the foreign-born and their descendants, in order to see if continued residence here made the rates approximate to those of the native-born. The assimilating force should, so far as we can see, make itself felt upon all nationalities; for they are all subject to the same influence and there is no reason why they should resist it.

Physical environment determines the economic activity of man. I have just spoken of the effect of the process of settlement upon all comers. The foreign-born participate in these varied economic activities. They are represented in mining and mechanical industries much more heavily than in agriculture. They are also numerous in domestic service and in the business of transportation. But it is in manufacturing that the characteristics of American industrial life — the use of machinery, the call upon the inventive powers, the discipline of perfect organization under the employer, the opportunity also for self-assertion in trades' unions — are especially present. Domestic service brings the foreign female under the influence of American family life. We doubtless have here an assimilating influence of economic environment, determined largely by physical conditions, which tends to reduce the foreign workman to the habits of life and work of the American laboring man.

[1] Quatrefages, The Human Species, p. 254.

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Physical environment influences the social activity of man. Climate determines occupations and the particular methods for carrying them on. It favors an outdoor or an indoor life, it determines the amusements, the opportunities for social intercourse. In all these respects the foreign-born would yield to the environment. Their concentration in large cities also, which is so marked a feature, the quick communication by railroads, the American tendency to change of domicile, — all these would prevent any isolation and overcome any lingering tendency to retain the habits of the old world.

It is easy to point out in this way that American life gives an opportunity for the physical environment to exert its assimilating influence upon all the immigrants of whatever nationality. It is not easy to see how they can escape it. That they do not escape it, we have negative evidence. This is as follows: In many districts and even in some states a great majority of the population is of foreign birth or parentage. If it were not for the assimilating influence of physical environment, would not these communities present some of the marked features of the world whence they came? Or at least would they not differ in some marked degree from other communities which are composed almost entirely of the native-born? But where do we find the peasant of Europe perpetuating his type beyond the first generation? Where do we find artisans carrying on their work by the primitive methods which still survive in so many parts of Europe? The negative proof is irresistible.

RICHMOND MAYO-SMITH.

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NEW WEALTH: A STUDY OF THE SOURCE OF INCOME.

THE word income, as applied to the annual receipts of a rich man, means that amount of wealth which he draws from any source whatever without encroaching on his capital. The income of an individual, then, is conceived of as coming from new wealth in this sense, that it leaves his parent or old wealth untouched. Extending this from the case of the individual to that of the community, we should be prepared to find that the various incomes called rent, interest, profits, wages, are paid out of new wealth, and that they leave the former wealth of the community as it was. On the face of it this seems a truism. As a matter of fact I find the greatest vagueness as to what is meant by old wealth and, therefore, as to what is meant by the new wealth of which income is composed. It seems to me that the difficulty of the distinction has been overlooked, and that the relation between the two has not been clearly formulated.

To give only one instance of this vagueness. In discussing the theory of wages, economists of late years have dismissed the old wage-fund theory, because it represented wages as paid out of wealth accumulated in the past, while, however wages may be advanced from previously existing wealth, they are obviously replaced from the value of the product, that is, from wealth just coming into existence. To say, however, that wages are paid out of product, encounters the equally obvious criticism, that many industries have no product — those industries, namely, which consist in personal services. These produce no value and price independent and outside of the servant. It is one thing to say that the collier is paid from the coal he raises ; it is really quite another thing to say that the cabdriver is paid out of his fares: although the two

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bear a surface resemblance. But both these theories of wages assume that we can make a clear distinction between old wealth and new — between capital accumulated in the past and new product; and to my mind the assumption requires more examination than it has yet received.

This paper, then, has three main purposes: to formulate the distinction between old wealth and new; to examine what is involved in the maintenance of old wealth; and to inquire if income always leaves that old wealth untouched. In the course of the examination I think we shall find that our usual statistics of wealth give us little idea of either the method or the rate of its increase. I think we shall find that, while income is normally paid out of new wealth, there is at least one class of income which encroaches on old wealth. And I think we shall find also that the possibilities of social wealth are not exhausted in the amount of income drawn.

The subject naturally divides itself into three: the conception of wealth generally; the distinction and relation between old wealth and new; and the relation of both to income.

The first preliminary to an adequate conception of wealth is to clear away a common but very inadequate conception. The doctrine is not yet extinct that wealth consists exclusively of things having exchange value; in other words, that wealth is the sum of exchange values.[1] It should not be difficult to disprove this.

A man starting life in a new country finds himself in possession of one or two desirable things in superfluity, within reach of many things on condition of laboring for them, and in presence of an infinity of things whose uses to him are not known. There is thus a curious difference between him and all other animals. By nature he is so little suited to his environment that he starves where the mere animal lives, and lives its full life. But, once armed with knowledge and a few tools,

[1] In political economy a word is indeed needed to express the sum of exchange values. But it is exceedingly unfortunate for a science which rests on an analysis of industrial life and cannot afford to neglect the common meaning of common words, that the older economists should have used the word wealth for this purpose.

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man does what the animals cannot do. Not only does he make the earth produce at his bidding and according to his directions, but he begins to remake his world — to put the matter and force he finds adapted to certain inferior races of beings into new arrangements adapted to himself. In doing so common sense says — what economics has sometimes denied — that man becomes wealthy. To the shipwrecked Crusoe his island seems at first a poor enough place to live in. As a fact, it is poor only to him, the last new animal who trespasses on it. It is rich enough to the living creatures whose original home it is. But after a few years the island becomes rich to Crusoe also. What do we mean by this except that Crusoe has rearranged his natural conditions? The trees, which otherwise blocked his path, he has trained into an impenetrable hedge around his cave. The earth, which grew briers and weeds, now grows corn. The goats, which fled in terror from his approach, are feeding quietly in his paddock. His canoe carries him safely over the element which formerly all but drowned him. By all these rearrangements of condition Crusoe becomes wealthy. But none of them has exchange value.

This, then, should prepare us to find that exchange value is not an essential characteristic of human wealth. We shall reach the same conclusion by looking at the normal evolution of a civilized community. The first social task essayed by civilization is, I imagine, the making of roads. There is no doubt that this adds to the well-being of any community, whether it be regarded as ministering directly to people's convenience and happiness, or as a means to the attainment of these ends. But when we inquire how the road appears on the balance sheet of the community, we find no figure against it. The road is a rearrangement of environment. It is a new condition which the pioneers have added to their common life. It goes into the same category as air and water and light, namely, a thing which we use but do not value. If we are taxed for its maintenance, it is as we are taxed for our municipal water supply, which none the less is

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a condition of our life, and not a commodity to which we attach any valuation.[1] But roads are only an example of a kind of wealth which every community is constantly increasing without increasing its valued assets. Every citizen who does any reclamation or improvement of a permanent character and hands the new property over to the enjoyment of the general community adds wealth of this sort. Indeed, the task of a municipality is very much that of rearranging the environment of its citizens, and surrounding them with healthy and pleasant conditions within which they may grow and develop in freedom. It is able to do so in virtue of the large numbers with which it deals. It is true that there are few, if any, things which even the best municipalities can give their citizens quite gratuitously. They cannot provide free gifts like light and air. But they do enable us to get for a small sum a great many things that otherwise would cost us dear, and some things that we could not get at all.

Now I submit that our ordinary estimate of human wealth overlooks these new conditions and changed conditions — just as few people perceive how much wealthier we are that we get our streets swept and lighted, or get gas, as we do in Glasgow, for *2s. 6d.* per one thousand feet, or police protection for *1s. 3¼d.* per pound rental. Who, for instance, ever thinks of valuing at its true figure the freedom to walk a city street after dark without danger to property, comfort, virtue or life? Thus I would suggest that more wealth than we quite realize surrounds us in the unpriced form of rearrangements — new conditions — without which we should most certainly now feel poor. Civilization strikes the rock and the water flows forth, but we value the water no more than we did the rock.

But there is a still more serious objection to looking for the conception of wealth in the "sum of exchange values." It is

[1] If this should possibly be doubted, on the ground that roads and other permanent improvements sometimes appear in the calculations of the municipal economist, the answer is that, at any rate, they are not an available "asset." And in comparison with a community having natural paths, the possession of made roads would not be considered as adding to the former community a superior value.

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that such values are necessarily expressed in terms of money. Now money is, as everybody knows, a most deceitful measure, by reason of its liability to increase or decrease. If the quantity of money increases, other things being equal, the price of everything rises; that is, the value of everything seems to have increased, while the only thing that has really increased is the amount of one kind of wealth — and that, at the best, an insignificant kind. But the general condition of money is, that there is too little of it to do the money work as it should be done. In proof of this it is enough to quote Mr. Giffen:

> A fall of prices from period to period is substantially due to the necessary difficulty of increasing the stock of precious metals so as to keep pace with the multiplication of commodities and the multiplication of the numbers of the people. The tendency, as a rule, among communities advancing so rapidly in numbers and in wealth as European communities do, including amongst them people of European descent, like the United States and Australia, must be for prices to fall steadily.[1]

If exchange value is taken as the essential characteristic of wealth, the general fact that money changes in value makes it necessary, after all our statistics of price have been obtained, to enter on another and a more difficult calculation, namely, as to how these prices have been affected by changes in the currency. The special fact which Mr. Giffen states shows that the steadily increasing quantity of goods is represented by a steadily decreasing sum of value. It is very much as if our thermometer indicated fifty degrees Fahrenheit, while our senses told us it was freezing; the explanation being that the scale had slipped down during the night.

But turning now from exchange value to value generally, we find a very serious constitutional defect in value as a measure of wealth. Surely the most obvious and recognized element in the common conception of wealth is that of abundance or plenty. But it is everywhere agreed that scarcity, or, as some would say, difficulty of attainment, is an integral element in

[1] The Case against Bimetallism, p. 74.

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value. The result is that, in all measurements by value, abundance and scarcity may play similar parts. Take Gregory King's familiar calculation for England two centuries ago, that if the crop harvested was short by one-half, the price increased fivefold. Here the value of grain rises to a maximum; but what raises it is the increase, not of the people's wealth, but of the people's want. This is enough to show that value and plenty do not increase simultaneously. But, indeed, the constant effort of every industry to produce cheaply is an effort to reduce the value of the single commodity by increasing the supply of the mass; in other words, to diminish value by eliminating the element of scarcity. We hear so much of the blessedness of cheapness that I need not dwell on this. I may only point out that, as it is our constant aim to reduce the price of everything, that object would be completely attained if we could get everything without money and without price. It is seldom, indeed, that we can eliminate value altogether; we can only reduce it towards a minimum. Therefore, it escapes our notice that in many departments we have increased our wealth by really changing our environment, in the important sense of bringing a great many things *very near* to the category of free gifts, and to that extent taking them out of the category of valued things.

I venture to conclude, then, that the "sum of exchange values" cannot be an adequate conception of wealth, inasmuch as we often find the same figures for scarcity as for plenty, and inasmuch as a great deal of what we all recognize as wealth finds no reflection or expression in value at all.[1]

If the difficulty of adequately defining the conception of wealth is acknowledged, it will be expected that there is still more difficulty in dividing wealth into old and new. After

[1] Of course it is obvious enough why economists have so easily assented to the common view. If there is to be any science, there must be measurement of the quantities with which it deals, and value *is* the measure in economics. That, however, is quite a different thing from the belief to which this actual and necessary measurement has led — that all is said as to the amount of the world's wealth when it is put into terms of value. On the whole subject, see Wieser's Natural Value, and the work of the Austrian school generally.

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what has been said, we are not likely to think that the new wealth, any more than the old, can be adequately represented by exchange value or in terms of value at all. So, when Mr. Giffen tells us that of late years the national income of Great Britain has mounted from £1,200,000,000 to £1,400,000,000, we shall not accept that as telling us the real increment of wealth during that period.

Most economists now follow Newcomb in regarding wealth as a "flow, not a fund." Professor Marshall speaks of the "annual net aggregate of commodities," which he happily calls the "national dividend," as a "continuous stream always flowing." But the figure of a stream, like all metaphors, emphasizes one feature at the expense of others. It does not indicate that what makes the stream continuous — if I may be pardoned the mixture of metaphors — is its constant death and resurrection. The peculiar difficulty of conceiving of the increase of wealth is that we cannot throw off the idea of wealth as money. Thus it escapes us that wealth is not a constant possession; not a thing which we get into our custody once for all and go on adding to. Wealth — the concrete, desirable things of which money is only the temporary mirror — is made for no other end than to be consumed. The moment it is produced it is already on its way to dissolution; and if we do not consume it, nature, with her moth and rust, will. We keep wealth at a constant level, not by storing, but by continual consumption and continual reproduction of it. Here, then, we come to a proposition which is cardinal to my argument. It is that if man is to live on what we rightly conceive of as "income," he must every year not only produce this income, but replace his former wealth. And before we can say anything about new wealth, we must be quite clear as to the meaning and method of this replacement of the old.

Let me state the problem. Taking land as the great *alma mater*, and the life of man as the end of economic action, we find, stretching between them, chains of productive processes, consisting sometimes of many links, sometimes of few. Take for instance the most prominent product of land — grain. This

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grain is directly raw material. It is rapidly manufactured into the finished good — food; and food, of course, passes away in supporting man's life. A longer chain is found in the case of processes beginning with green crops and roots. Grass mainly builds up the structure of those most useful animals, the sheep and the cow. On one side, the flesh of these animals is in the same line with grain: it is a raw material which passes at once into food. But other parts of the animal, as fleece and hide, are raw material which has to pass through many and long processes before they come into the same finished category as food. Longer still, perhaps, are the processes which start with plants like cotton and flax. These, also, are raw materials. Through many stages they pass into various clothing fabrics, and wear away their life in keeping in the animal heat necessary for the maintenance of man's life. Not substantially different is the industrial course of mining products. Such things as the metals, coal and stone are raw materials which pass by manufacture into innumerable goods and finally subserve many sides of human life.

From these chains of production — which will be understood, of course, as only typical and illustrative — it becomes clear that "all living comes from the ground," and is, immediately or at one remove, raw material; that it passes next into the shape of "consumption goods," and finally perishes, quickly or slowly, in sustaining and filling the life of man. By consumption goods, or consumers' goods, in economic science, we mean all forms of wealth that wear out and pass away directly and without ulterior intention in sustaining and beautifying human life. And by "life" we mean not simply the physical life, but life on all its sides — intellectual, aesthetic, moral. Thus, consumption goods range from the necessaries of life to the purest luxuries; from the firework to the public building; from the picture to the park.

However great, then, the bulk of land and capital in our eyes, our real concern is with these consumption goods. They alone, in the last resort, are our wealth. For them and toward them all other forms exist. In fact, everything from the land down-

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ward is in many respects best conceived of as consumption goods in the making. But, just because of this, it is of the utmost importance that we maintain unimpaired all those forms of wealth from which the consumption goods finally come.

Now, on the productive powers of land and of what — to give a clearer conception to the important part played by capital in national economy — I may call "machinery," depends primarily the amount of goods which we get to consume. And these two must go together. It is not sufficient that the earth should be capable of yielding more material, if the machinery which is to work it up does not keep pace. As, then, the increase of the one is limited by the increase of the other, there must be a balancing of the production of the material against the production of instruments. This, however, is automatic, and arranges itself by the reciprocal forces of supply and demand. Our problem, then, is to consider how these two are maintained in their dynamic efficiency; that is to say, how these two kinds of old wealth remain undiminished by the new wealth which comes from them.

With regard to agricultural produce there is not much difficulty. Here is a field where the crop harvested last year serves as food to the field laborers while they produce this year's crop. Each spring so much seed is buried in the ground. Each autumn it reappears in manifold, the difference between the seed and the crop being that from which the capital used up and the wages paid must be replaced. This production *is* a "stream." The earth is a perennial source of wealth.[1] The crop comes from its depths as water flows from a spring. There is no remaking here to keep up the level, for earth makes itself.[2] Thus I say that the maintenance of old wealth in this case is simple.

But what we do not sufficiently realize is that agriculture is

[1] I confine myself here to agricultural produce. It will not escape notice that many of earth's harvests are exploitations — the using is the using up. The limitation is justified, I think, if we remember how growing civilization puts practically endless stores of minerals and metals at our disposal.

[2] Of course man does remake much of it, but, left alone, it would remake itself; and, besides, repair is not replacement.

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not a type of all production. Earth is *sui generis*. It is the one and only instrument of production which never wears out, and is always capable of giving back in manifold the seed sown. Compare agriculture with any other productive process. Say that we put one hundred pounds of raw cotton on the table of the "scutcher," and pass it through all the processes of cotton spinning till it comes out from the mule as the spinner's finished article, yarn. It will always weigh less than one hundred pounds, never more. So it is with all manufacturing. By no possibility can we multiply the raw material or make it grow in the process. And, moreover, in doing its work the machine wears out, and no amount of lying fallow will give back the life to that machine. But, if wealth is to remain at the old level, the machine must be replaced before there is any addition to wealth. If the machine dies in giving birth to merely the same amount of wealth as was embodied in it, there is no increase whatever.

If land were in the same position as machinery, it would wear out in yielding its crops, and the crops would require, besides the feeding of the workers, not only the sowing, but the remaking of the ground. The demands, then, on old wealth are not so great in land production as in mechanical production: and if machinery is to increase, we shall have to find an explanation of the enormous productivity which replaces it as well as makes it yield its proper harvest — for the cloth is the harvest of the loom as truly as the grain is of the land, and the machine's proper work is only begun after it has produced enough to reproduce itself. The explanation is that, in mechanical operations, man gets control of natural forces which produce greater results *for him* than do those which he has control of in land production. It is a wonderful thing to see a seed reproducing itself a hundred-fold. But it is still more wonderful to see a force of a thousand horse power generated by the resistance of boiler plate to the expansion of steam, and to see that power conducted along belts and wheels and shafts to change a common insignificant plant into clothing. If agriculture amounts to the multiplication

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of seed by the hundred, what shall we say of manufacture that multiplies man's strength by the thousand? We are apt to overlook the peculiarity of this phenomenon from the fact that we do not often see machinery directly multiplying itself, while we do see the seed reproducing itself. The reproduction we see in the case of capital is the reproduction of value, not of similar substance. The body of the machine dies, not in giving birth to another machine, but in creating another kind of body which has no likeness whatever to the parent, except its soul of value. The £100 that the machine costs passes into £100 *worth* of commodities. This is what makes it so difficult to understand the particular reproduction of wealth of which we are speaking. But it is not impossible to see machinery reproducing itself. It is true that a locomotive does not directly produce baby locomotives, but it does contribute to the making of hundreds of locomotives. And we may actually find a machine shop reproducing its tools over and over again before the parent tools are worn out.

Now that we know what replacement means in the case of the dynamic forms of wealth, we go on to ask what shapes the new wealth takes. There is not much difficulty in this after what has been said. The principal form is, of course, that of income —which we shall consider presently. But beyond this there are at least two other forms.

One is the increased productivity of the land, the practically indestructible source of raw materials. This fountain and source of wealth may flow more abundantly. As a fact, we are only beginning to understand how adaptable the earth is to man. We have mastered the uses of only a few things, but any one who has the prophetic vision of science knows that the horizon of production is every day widening. Civilization presents a perpetual course of reclamation, at the same time that cheap and rapid transit is drawing the consuming world closer to its supply. On the whole, we are justified in saying that we have yet little idea how deep and full this source of wealth is.

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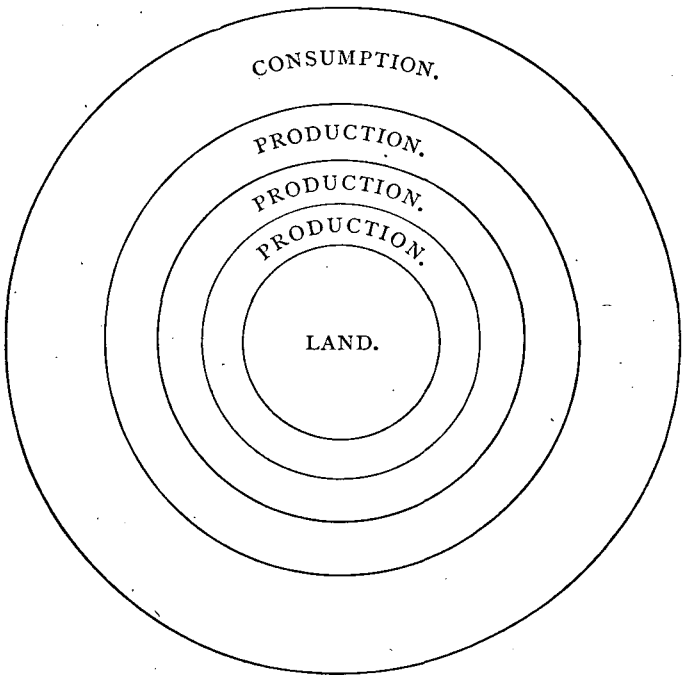
The second form which new wealth assumes is the investment of machinery, or concrete capital, in larger, more powerful and more durable forms, because of the extension of manufacturing processes in time. The present tendency of production is to invest labor in processes that take longer and longer time. Thus, not only is fuller advantage taken of the division of labor, but more powerful forms of natural force are got under control. As the time which elapses between the first processes and the finishing of the goods stretches further and further, the capital to carry on these processes goes on increasing. But in the end the output of goods is enormously increased. The longest way round is the shortest way home.

The progress of wealth, then, may be shown by this diagram:



The innermost circle represents the productivity of the earth. The widening set of concentric circles represent the

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production processes and machinery. The outermost circle represents consumption — actual destruction of the wealth made. In the progress of wealth we have looked at, the innermost ring is enlarged by finding and opening up new springs, and the series of rings which represent production and its lengthening processes becomes more numerous. The result is that every day a fuller stream of new wealth falls over into the circle of consumption.

And now we are ready for the consideration of income. Let us be sure, however, of what we mean by this. Income is not coextensive with that which we consume every year. It is simply the amount of wealth which comes into our disposal or command every year. It is in a confusion of these two things that we find the origin of the common notion that what one man gains in income, another loses. This is true only of that part of income which a man *consumes*. But, evidently, when this power comes into a man's hands, he may deal with it in many other ways — may transfer it, may lend it, may postpone doing anything with it. It is money again that misleads us. We spend our money : we consume only our wealth.

Nor is income coextensive with new wealth. It consists only of that portion of new wealth which I have represented as the outer circle, that of consumption goods. This, however, is not immediately obvious, and must be proved.

People draw their incomes in the shape of money. But, of course, money is only the temporary abode of a certain amount of value, and the real income is what this money is converted into.[1] Now a great many people do not convert their money income into the goods which they intend to consume. They invest part of it. This is one of the facts that make us hesitate at the statement that incomes consist of consumption goods. But what is the meaning of this investing? Is it that the income receivers do not wish consumption goods? By

[1] In order to look through this money economy to its essence, we may figure to ourselves that society is a person who produces all the goods he consumes and more, and draws his income in that part of the products on which he wishes to live. This lets us see that real income is the finished goods which a man buys with his money income.

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no means. They invest with the deliberate purpose of having some day more goods to consume. They voluntarily postpone taking their share of finished goods; or rather, they take them and hand them over to other persons. For just as the grain is kept alive to reproduce itself by being buried in the earth, so are finished goods generally kept alive by investing them in the bodies of laborers.[1] Thus those who postpone their consumption take claims on the future instead. But it is on the future finished goods that they take claims. Though it may appear at first sight as if they got paid by taking claims on the instruments of production, the truth is that they thus acquire claims on the products which these instruments are to turn out.

There is another consideration which might lead us to think that some incomes do really consist of claims. To put this clearly, let us eliminate money. Figure society as a circle of half a dozen workers, each producing something that the others want. They exchange their products each with the others, and at the end of the day each has his share of what all have made. It is in order to get these finished goods from each other that they work and produce. They would never think of producing at all unless it were in order to get things to consume. They would never add to their tools unless it were to make these tools more fruitful. They would never do anything to their fields and mines if it were not to get from them some time or other more consumption goods. Now, as these men grow in knowledge and skill, their labor becomes more productive; they *may* produce more consumption goods. But they may desire to increase their dynamic wealth; and in this case they will content themselves with putting out very few finished goods — just enough, say, to live on. Thus they may so arrange that three of their number will produce the bare necessaries of life for the six. The other three workers will invest their labor in processes that

[1] By this investment we throw back the finished wealth we do not consume, through the medium of labor, into the circle of production goods. It is chiefly from this saving that the earth becomes more fruitful, that tools are made and that manufacture can extend its processes.

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take, we shall suppose, two years. From these processes they will get no finished goods for two years. But are they, then, to have no income during that time? The course of events will be that the first three workers lend the second three half of the necessaries they produce, and take claims on half the future produce of the long process. Thus, at the end of the first year, the first workers get the consumable part of their income in their own finished goods. The other part of their income for this year consists of a claim to half the produce of the two years' process. The second workers, again, get their consumable income, also, in the finished goods of the first workers, for which they have mortgaged half their two years' produce, and they hold in their hands the half-finished products of their own long process. At the end of the second year, the first workers get their income, half in their own finished goods and half in the now realized share of the produce of the long process. At the same time, the second workers get their income, half from the finished goods of the first workers and half from that part of their own two years' process which remains unencumbered.

What becomes evident is that both first and second workers really get their income out of finished goods. The *total* process—the total harvest—is a two years' one. The produce consists partly of goods turned out annually, and partly of goods turned out biennially. But, inasmuch as men have to live from day to day and not from harvest to harvest, it appears on the surface as if some people got paid in actual goods and others in claims. This is, however, nothing more than the social arrangement by which some are set to produce the goods for which man cannot wait, while others are fed by those goods on condition of investing their labor in processes that are more prolific but that take time. The fact is, we are misled by the calendar. Instead of looking at labor as producing an annual harvest and making all our calculations by the twelve months, we should think of it as producing a progressive harvest,—some crops ripening this year, some next, some next again,—the income appearing all the time.

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Income, then, is taken primarily in claims, not in finished goods, in two cases: first, where people do not wish to consume, but to invest; and, second, where the labor which produces the income is invested in processes that take time before there are any finished goods. But in both cases I think we may take it as shown, that income is really always in finished goods, although some people *may* delay taking their finished goods for years, and others *must* delay, owing to the long distance of their harvest.

From all the foregoing discussion there are two conclusions to be drawn. The first is that, while income is normally paid out of new wealth, there is at least one class of income which encroaches on old wealth. It is easy to see that our increasing wealth manifests itself, not only in greater masses of commodities and in finer qualities of commodities, but in a great variety of personal services. Now what is the "service"? I am afraid it is not always appreciated that, in the making of the servant, we really sink labor and capital in the making of a special kind of commodity. One man makes a piano: another plays on it. The two are necessary for the joint product, music. When the piano is made, every one can see that labor has added a tangible wealth to the world. But when the player is made — supposing that exactly similar sums of wealth are sunk in his subsistence and training — we do not consider him personally as so much wealth. But why not? He has added so much to what the world desires that, while people will give no more than a guinea a month for the hire of a piano, they will give a guinea a night for a pianist. To see the economic consequences of this, compare the servant with the artisan. Take the singer as type of the servant. Here is a person in whom wealth has been sunk and has perished, just as in feeding and training the artisan. But when the "sink of money," as we appropriately call it, is past, what is the difference between the two? The artisan disgorges, as it were, all the wealth sunk in his apprenticeship; gives it back gradually to the world — not without interest — in the shape of goods from his hammer and chisel. The singer

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appears on a platform; exerts his vocal chords; we pay five shillings; and the world does not put itself down as any richer.

The fact is that, year after year, wealth is sunk in making what we might call "human commodities." Yet, although we recognize the value of these commodities, they do not appear in any balance sheet to our credit. Indeed, they appear on the other side of the account—as a charge against us. A common way of calculating wealth is to take the sum of commodities, divide it by the number of persons consuming them, and thus get the wealth per head. The more commodities, the more wealth; the more participants, the less wealth. And here are painters, players, musicians, teachers, clergymen, domestics —our "human commodities" generally—appearing on the balance sheet, not as wealth, but as those for whom wealth exists and among whom it is divided!

The peculiar difficulty in estimating the economic position of the servant is that he does not usually stand alone, as the typical singer does. The service generally goes with the commodity. The majority of workers perhaps are engaged in serving humanity by making tangible goods. But goods once made require to be served and ministered to the consumer. The joint is naught without the cook, and the dinner naught without the waiter. Some commodities require a great deal of service to a small amount of goods; others require just the contrary; and some goods are so impalpable that the wealth seems to be all service and no goods. What we pay for is the song, but the singer catches our attention. Here, then, is perhaps the greatest difficulty in estimating the sum of wealth; that we are converting the raw material of the world, not only into commodities which we consume, but into commodities which consume!

Now it seems to me to be a tendency of civilization to put more of its added wealth into service: as we grow richer we engage servants rather than buy commodities. And one thing which seems to go far in confirming this is, that society now supports—and gladly—a great many people who add nothing material. Once if a man had hinted that he would like to be

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a poet, a player, a singer or even a journalist, he would have been looked at with curiosity and even suspicion, and for an intelligible reason. When bread and butter were scarce and were got by hard labor, it did look curious that a man should expect other people to share their bread and butter with one who did not produce in return something as tangible and nourishing as bread and butter. But with the growth of wealth, all these occupations have become legitimate and honorable callings, wherein it is recognized that men give value for value, and there is a par of exchange between the products of the hand and those of the brain. Indeed, one would be inclined to say that the trend of matters is towards a future where service will be recognized as the true contribution of man, the making of commodities being relegated to machines and to those persons most like machines. This, then, is a case where the workers do not produce their own incomes, but live upon other people. Their various services are no doubt value received. We are happier; it is to be hoped, healthier and better for them. But the economic question is: Can we afford them? He is a rich man who can allow his horses to "eat their own heads off." It is a rich community which can allow many of its members to perform that feat. If a man cease to produce, and spend each year more than people will pay him for the hire of his wealth, we say he is "living on his capital." Is it not possible for the world to do the same if it turn its sons and daughters too soon into servants?[1]

There is a second conclusion which I should draw from what preceded. Looking at the concentric rings of the diagram, we see that the inner rings represent the capital of the world and the outer ring the interest of that capital. The increasing wealth of the world may be looked for in the increasing capital, or it may be looked for in the fuller overflow from that capital into the consumption circle. That is, in calculating wealth we may capitalize income or discount capital. But we must not

[1] It will be observed that this case seems to vindicate the old wage-fund theory as regards certain industries.

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add the one to the other, any more than we should calculate a man's wealth by adding his capital to his interest. Now hitherto we have looked exclusively at the increase in the dynamic wealth, and, having done so, it might be thought that we cannot look for any increased wealth in the circle of consumption. But this is not quite the case. If we escape from the calculations of value into calculations of utility, I think we shall find a possibility of wealth of no small importance. Here, however, we come upon a chapter in political economy which is only now being written ; that is, the effects of consumption on the increase and distribution of wealth.

It is true that all finished goods are made to be consumed, and that all do in time pass over into the outer darkness of non-being. But there is consumption and consumption. The finished good may be such that it can be consumed only by one person ; that it can be consumed by that person only selfishly; and that it can be consumed only at once. On the other hand, there are goods which can be consumed only by groups and by multitudes ; there are goods whose consumption is really the harvesting of fresh powers of production ; there are goods whose consumption may be spread over years and may enrich successive generations of men and women. It is not difficult, then, to see that on the constitution of these consumption goods depends a distinct possibility of gain or loss, of added wealth or added waste, which is quite apart from anything we have looked at. And the serious thing, to my mind, is, that we do not seem aware of the gigantic possibilities here. It is sober truth that we may be producing a greater amount of value every year, and so a greater amount of what we ordinarily call "wealth," without being aware that we are cutting away the foundations of real well-being. To put it concretely : What avails it, as regards humanity at large, how much we add to the dynamic wealth of land and machinery, if these forces are set, say, to manufacture fireworks, or build pyramids, or maintain standing armies ?

What I wish to point out is, that the resources of the world, natural and historical, may be set to maintain society generally

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in beautiful and healthful and good life, *or* to provide passing gratification — if not worse — to the desires of a few. In either case the consumption circle will be filled with the same amount of value, but the real wealth in the two cases will be infinitely different. This might be represented on the diagram by dividing the consumption circle into two; the inner one to represent the consumption goods that remain in existence over periods of years, and also those whose consumption is social and not selfish; the outer one to represent the consumption goods that are consumed and disappear within the year. While, then, the entire circle of consumption would grow absolutely — that is, more goods of all sorts would fall over into the life of man, — the inner circle would increase relatively: the sea of quick and selfish consumption, as it were, slowly retreating and leaving underfoot the firm ground of social wealth and new conditions.

Here, then, are two responsibilities put upon consumers: one for consumption, one for production. Once goods are made and in the consumption circle, there is nothing to be done with them but consume them. The true office of consumption goods is, however, to support, not the idler, but the worker. In the idler wealth comes to an end; in the worker it turns into muscle and brain power, and is eternally reproduced by them. It is the difference between a fire burning away in the open air and one placed below the boiler. We have, therefore, to see to it, first, that the goods made are not consumed by idlers. But, beyond that, we have to see to it that even the worker does not consume on himself selfishly what a number of workers might as well consume in company.

In another place I have called this latter the "socializing of consumption," and I venture to think that it only requires mention to carry conviction that there are here very great possibilities of economizing the wealth we do consume. If society were once to realize that it is yet poor; that, therefore, it is not possible for all to be rich; and that, accordingly, it is the duty of every one to make his wealth go as far as possible: conscientious people would surely set themselves to think how

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they might consume, not by warming their own feet at their own firesides, but by throwing open the doors for humanity to come in and enjoy the warmth with them.

But beyond this responsibility for wise or foolish, selfish or unselfish consumption, there is a second. Consumption does not end with itself. It gives direction to dynamic wealth what forms to take. The demand for fireworks invests capital and enlists labor in gunpowder factories. It is certainly not the demand for bread that covers our fields with the bearded barley. The peculiar difficulty of the problem here is that the matter is in our hands, and yet not in our hands. It is true that all things exist for us, the consumers. It is our desires, unconscious or expressed, that dictate what goods shall be produced. But, on the other hand, we are not free, morally, to change the direction of our consumption without counting one peculiar cost. Industry is producing what it has been told for years to produce. The wages of millions who have no reserve to fall back on are bound up meanwhile with the continuance of production in the ancient channels of consumption. Consider, for instance, what would be the effect of throwing on society these two millions who, we are told, are engaged in England in that trade the economist has least sympathy with, the liquor traffic. Thus, to stop buying goods, even in the old foolish way, is to assume a responsibility for the dislocation of industry which few of us are wise enough — even if we were bold enough — to take on our shoulders.

To go further into this subject would take us very far. I must content myself with pointing out that, *pace* Mr. Mill, every person who buys a pennyworth of goods in a shop is an employer of labor, and cannot escape the responsibility of guiding the direction which labor takes for good or ill.

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CAMORRA, MAFFIA AND BRIGANDAGE.

THE numerous attempts which have been made to explain the Camorra and the Maffia can hardly be said to have been successful. Social phenomena are, as a rule, exceedingly complex, and in this special case the writers who have treated the subject have too often based their conclusions on a small number of facts — the most striking, perhaps, but also the least characteristic. The most conflicting theories have been put forth to account for the organizations. Erudition has added to this confusion. The Camorra, for example, whose existence cannot be directly traced further back than the year 1820, has by some writers been identified with analogous Spanish and Arabian associations that date back to the thirteenth century. Political partisanship, also, has prejudiced the understanding of the matter. It has been and still is the fashion with some political writers, to represent the bad features of contemporary life in Italy as a legacy from the paternal governments to which the present reigning dynasty succeeded; and, of course, the Camorra and the Maffia have been accounted for in the same easy way. Lately, this subject has been investigated by Lombroso and his disciples, notably by Mr. Alongi; but these writers have been led by the nature of their studies to observe more the external, expecially the criminal, manifestations of Camorra and Maffia, than their inner causes and spirit. On the other hand, in popular songs, in novels and poems[1] the Camorra and Maffia appear, like the brigands, in most brilliant and fascinating colors, as gallant knightly orders, or holy *Wehme*, for the defense of the poor and the oppressed.

I have never had the fortune to be made a prisoner by brigands, and to be enabled thus to observe *in naturâ* their character and customs. But I have had frequent opportunities, professional and other, to become acquainted with members of

[1] *E.g.*, the Tales of the Cavalleria Rusticana, by M. Verga; the Calabrian and Abruzzese Tales, by Mr. N. Misasi.

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the Camorra; and during a recent sojourn in Sicily I have studied the Maffia. Should any one ask of me a categorical statement as to the real nature of those peculiar institutions, whether their predominating characteristics be vice or virtue, cowardice or courage, oppression or rebellion, I should have to reply: There is somewhat of all this. A more satisfactory answer can only be obtained by a comparative study, such as I am about to undertake in this article.

I.

Even so late as the year 1862, *i.e.*, two years after the installation of the present government, a traveler landing at Naples might see, as soon as he stepped on shore, a mysterious personage approach the boatman and quietly receive from him a copper coin.[1] Who was this man, comparatively well dressed, often adorned with jewelry, who came forward with the air of a master, claimed his due, and received it without having uttered a single word? If the traveler should have put the question to the boatman, he would have been told that that man was "the Camorrist." On arriving at the hotel, preceded by the porter with his luggage, the traveler would notice a second individual, equally mysterious and taciturn, to whom the porter — or, if there were two, each of them — handed with evident submissiveness, again, a small coin; on further inquiry the traveler would have received the same unsatisfactory answer: "It is the Camorrist." On taking a cab a similar incident would occur, and so on throughout a tour of the town. At railway stations, at custom-houses, at street corners, in coffee-houses and taverns, in gambling-dens, the Camorrist levied taxes on the business and the pleasures — particularly the vicious pleasures — of the poor. His functions might appear successively as those of the policeman, the justice of the peace, the broker, the money-changer and many others.

Who, then, was the Camorrist? And who gave him the authority for his acts? The answer is that he was a member

[1] Marc Monnier, La Camorra (Florence, 1864).

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of a secret association, and that the power he wielded was conferred by nobody, but was merely assumed. Yet he was not necessarily a criminal. He might, strictly speaking, commit no action for which he would be amenable to punishment; and whatever illegality there was in the fact itself of the existence of the Camorra, was practically obviated by custom and by the acquiescence of the government. The Camorra was, indeed, almost a branch of the government. Yet the government at times persecuted it, and ultimately has nearly destroyed it. At the height of its glory, the Camorra acted quite independently of the government, and rather as its rival. The society then was, in fact, a lesser government established on the margin of the greater. The prominent features of the organization may be summed up as follows:

1. The real object of the Camorra was to extort money; yet, in return, it contrived to render some service or assistance to its victims.

2. Such services might be, in some cases, of a questionable character; the Camorrist might assist in doing wrong, or even in committing crime; but, as a rule, *i.e.*, when he had no reason to the contrary, he acted as an impartial arbitrator between the parties submitted to his self-assumed jurisdiction.

3. The jurisdiction or field of operations of the Camorra was confined to such social relations as ordinarily remain outside the province of the government, — petty interests which a government neglects to protect, or for which the official protection proves too slow or costly.

4. The government tolerated the Camorra, provided it confined its operations to the lower classes of the population. Hence the traditional respect of the Camorra for the middle and higher classes.

5. The lower classes had become accustomed to the rule of the Camorra, and submitted almost ungrudgingly to it. The Camorra continually drew to itself the most daring elements of the population, and left out only the weak and timid. The latter found protection, as well as oppression, at the hands of the former.

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6. The Camorra recruited and disciplined the most violent characters, and reduced crime to its mildest form.

To corroborate those statements I shall describe the operations of the Camorra.

The mysterious personage whom we have referred to as receiving fees from the boatman and the cab-driver, acted as a time-keeper and distributed the jobs between the men. His presence was intended to prevent quarrels. Those classes of workmen were actually organized under the rule of the Camorra. So long as the Camorra was alive the Neapolitan cab-drivers successfully resisted the introduction of the omnibus and the enactment of a municipal tariff and other restrictive regulations. In its latter days the Camorra, at the request of the police, often induced the striking cabmen to resume work — a fact which bears witness to the hold which the association still retained on the men. At city markets the Camorrist would inspect the merchandise, verify the weights and measures and settle disputes, charging one *sou* per basket or sack of merchandise brought for sale. In the evening, when the little costermonger (*bazzariota*), having sold off a basket of fruits or vegetables, repaired to the tavern, the Camorrist would be there to collect the money — which belonged to some farmer from the vicinity — and would hand it over to the owner on the following morning, when he appeared with fresh goods at the market. At a country fair the Camorrist rendered more important services. He would stand guarantee to the buyer of a horse or mule that the animal was not disqualified for work by some occult defect; while to the seller he would guarantee the punctual payment of the price. As a matter of fact, the guarantee involved no pecuniary risk to him; it was based wholly on the submission of the people to the Camorra, and their fear of the punishment which the association would visit on the party who failed to fulfill his obligations.

But the functions of the Camorra covered a much wider and more varied field. In street fights the Camorrist would throw himself "between the daggers" and separate the combatants at the risk of his own life. His presence at auction sales pre-

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vented frauds and impositions, except such as were committed on behalf of the Camorra. The extensive connections of the Camorra made its assistance and connivance indispensable to the preparation for the commission of thefts and burglaries, and moreover to the disposal of the booty; yet, through the Camorra stolen property might be recovered for a reasonable indemnity; so, too, the seducer might be obliged to marry his victim, or otherwise to atone for his crime. The pawnbroking and money-lending business was entirely under the control of the Camorra, through which recalcitrant debtors were compelled to honor their obligations and the impecunious might obtain a delay. In taverns, gambling resorts and houses of ill-fame, the Camorrist on duty prevented frauds, settled disputes, maintained such order as was compatible with the circumstances, and, as a matter of course, helped himself to a share of other people's money. Nowhere was the power of the Camorra as firmly established as in the prisons. Group-meetings were held by the imprisoned Camorrists, a regular correspondence was maintained by them with the outside world, business was transacted and orders were issued. The life of the Camorrists in prison was one of great comfort; besides the regular dividend which they received from the society, they extorted from their fellow-prisoners, sometimes most cruelly, money, articles of clothing and food. At the same time it was their duty to maintain cleanliness in the wards, prevent thefts and quarrels, and minister to the spiritual needs of the prisoners by keeping a lamp burning before an image of the Madonna.[1] One of the most lucrative enterprises of the Camorra was the organization of religious *fêtes*, which are such an important feature of popular life in Naples. Two of the great Neapolitan religious observances, the *fête* of Piedigrotta and that of the Madonna di Montevergine, were the official festivals of the Camorra.

In conclusion, the domain of the Camorra, like that of Roman jurisprudence, embraced everything human and divine — commerce, art, politics, religion and family relationship; and

[1] Stefano Pucci, Schizzo Monografico della Camorra Carceraria (Matera, 1882).

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although its rule was generally obnoxious, it fulfilled to some extent a useful social function ; and, as a matter of fact, when the Italian government undertook to suppress it, those accustomed to its protection made no secret of their regret.

The organization of the Camorra was hierarchic. The highest class, the Camorrists, were "peers among peers." Next in order to the class of Camorrists was that of the *picciuotti di sgarro* — soldiers at the command of the Camorrists. These were young men who had already given some proof of courage and fidelity as *giovanotti onorati*, and who now aspired to be nominated Camorrists. The *giovanotti onorati* were mere apprentices, standing outside the circle of the association.

The Camorra has been compared, for its internal organization, to a federative republic. Each group of Camorrists elected its own chief and its own treasurer, and had a free hand in the management of its internal affairs. The groups in each district of the town formed a *paranza*, and their chiefs made up the council of the *paranza*. The chiefs of the various *paranze* formed all together the general council or senate of the corporation. The chosen chief of the general council was the supreme ruler of the Camorra, an "uncrowned king," a real potentate.

Nothing illustrates better the pseudo-governmental character of the association than the way in which recruits were made. A brave, zealous, almost respectable young man (no member of his family should lead an immoral life), at the age of choosing a trade, would apply through a friend to the Camorra, and inquire whether there was a vacancy. If the reply was unfavorable, he would look for some other employment. In case he was found suitable, he started in the career as *giovanotto onorato*, and later on was promoted to *picciuotto di sgarro*. In both capacities the young man was attached to a Camorrist, and had to carry out his orders, whatever they might be — whether to murder a man in cold blood, or merely to watch a game. And he would acquit himself of his duties — called *obedienze* — with the same tranquillity of conscience as a

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policeman who arrests an unfortunate rabble of beggars, or a soldier who fires on his brothers on strike. His object was to become a Camorrist, and as he could attain this only through the recommendation of his immediate chief, he sought to propitiate the latter by all possible means. Yet, as Mr. Alongi remarks,[1] merit was more likely to ensure success under the Camorra than it is under any public administration. Any stranger might challenge a chief to single combat, and if victorious, not only would the Camorra take no revenge on him, but he would be invited to take the dead chief's place, — a practice obviously intended to keep alive the valor of the chiefs, and to prevent them from regarding their posts as mere sinecures.

After nomination, and previous to assuming his new dignity, the *picciuotto* had to fight a duel with a Camorrist. The two adversaries, having sworn that they were not at enmity, now crossed daggers, aiming only at each other's arms. The encounter usually ended with a mere scratch, and was not so much a test of skill as a ceremony of investiture.

The rules of the Camorra, verbally transmitted from old to new members, prescribed obedience to the chiefs, unconditional respect for the laws and decisions of the society, kindness to the inferiors and politeness towards the victims. As a matter of fact, violence was only resorted to in extreme cases, when fraud or intimidation had failed; hence an opinion gained ground among the public at large that the Camorrist was a boaster, who assumed a threatening air, but who became quite humble as soon as he saw that he was not feared. Personal vengeance was strictly prohibited, and duels were only permitted for the gravest offenses. Cases were heard and judgment was passed on offending members by the assembled group, not without a certain parody of justice. A formal debate was held between a prosecutor and a counsel for the defense, and each of the judging members assigned the reasons for his vote, these opinions being given in order of seniority. The grand council had exclusive cognizance

[1] G. Alongi, La Camorra (Turin, 1890).

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of grave offenses, and on minor matters acted as a court of appeal from the decisions of the groups. The penalties, formerly very severe (death in nearly all cases), were later mitigated and differentiated. For the Camorrist the usual punishment was suspension from his weekly dividends. Inferior members were reprimanded, subjected to different kinds of humiliation, or to corporal punishment, such as a box on the ear or a gash in the face. Pardon was liberally granted. Every newly admitted Camorrist was directed by his instructor to make two special inquiries, *viz.*, what members of the group were undergoing punishment, and what was the state of the funds. Then he begged, and as a rule obtained, pardon for the former and his share of the latter. Occasionally the head chief of the association celebrated the day of his patron saint by granting an amnesty. The last event of that kind happened in 1872, and it made something of a sensation in Naples on account of the popular rejoicings to which it gave rise.

The regular tax levied by the Camorra on games, marketing, prostitution, *etc.*, was a duty *ad valorem* of ten per cent. Every week or fortnight the money was distributed at a general assembly. A third part of the gross revenue was set apart as a bribe for police officials; allowances were then made for imprisoned and sick members and their families, for law expenses and for old-age pensions; the remainder was equally divided among the Camorrists, the chief, however, taking a lion's share. The *picciuotti* received but a few figs or, on grand occasions, were treated to a dinner; whilst the *giovanotti* were rather expected to treat the Camorrists.

But the earnings of the Camorrist were by no means limited to his share in the revenue of the association. Many sources of profit were open to enterprising members. Some were established as pawnbrokers, fodder merchants, wine merchants, keepers of gambling houses, joining with legitimate traffic the more objectionable functions of receivers of stolen goods. Others were employed by large merchants or contractors "with a share in the profit," chiefly on account of the number

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of customers they were able to procure. Others derived a good income from systematic smuggling, and the least fortunate lived on the prostitution of their female friends. Altogether the profession of Camorrist was very lucrative, and in a few cases conspicuous fortunes were made.

One of the favorite enterprises of the Camorrists was the "little lottery," an imitation of the lottery (*lotto pubblico*) which is conducted under the auspices of the government as a source of public revenue. The temptation was a strong one. The Italian government derives from the lottery a net yearly income of 70,000,000 francs. The speculation is brought within the reach of the poorest, who starve themselves in order to put a few cents every week into a game where the odds are overwhelmingly against them. The Camorra was envious of the government, considering this enterprise as an encroachment on its own province. So, to supplant the government, the society organized an extraneous system of betting on the numbers of the regular Saturday drawings for the public lottery. This competition became in time so damaging that the private lottery was prohibited by law under heavy penalties, and there has been no end to the prosecutions and convictions on this head.

The revolution of 1860 found the Camorra so powerful that the dictatorial government of Naples entrusted it with the functions of a regular police; and it must be admitted that, although thefts were committed and money was in some cases extorted under menace of political denunciation, on the whole matters proceeded satisfactorily. No riot took place in Naples; no private vengeances were executed during the interregnum. Friends and enemies of the dethroned monarch, rich and poor alike, bowed beneath the yoke of the Camorra, which, though formerly attached to the Bourbons, had been at the eleventh hour converted to liberalism by the prospect of gain.

The Camorra, however, not satisfied with the honors of its new avocation, improved the opportunity by laying hands on public revenues. At the approaches of custom-houses, Camorrists watched the arrival of dutiable goods, collected the duty

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and then escorted the merchandise past the regular officials, claiming that it was to be used in the public service. Through this practice the revenue of the official customs at Naples diminished till, on a certain day, the sum collected amounted to but twenty-five *sous* (five cents)! The government took alarm. Ninety Camorrists were arrested in a single night, and by that measure, in the somewhat inflated terms of an official report, "the dignity of the customs-officers was restored." On the day immediately following the arrest, the customs receipts were 4000 lire ($800), other revenues rising in sympathy.

The death-knell of the Camorra now sounded. The government of United Italy having resolved not to tolerate the existence of a rival power, a fierce persecution was instituted against the association and carried on by every possible means, legal and illegal. A mere ministerial decree revived under new names the powers which the police had under the Bourbons to subject "suspects" to special surveillance, and deport them for an indefinite term to a penal colony in the islands of the Tyrrhenian and Adriatic seas (Ischia, Lipari, *etc.*). Yet, the Camorra was not destroyed by these measures, nor did the government pursue without interruption the policy of repression. Now and then the influence of the Camorra was exerted, as has been said, against strikes; and at every political election both the government and the opposition were eager to secure the services of leading Camorrists, who were only too successful in canvassing for votes, and in bribery, intimidation and ballot-box stuffing. On the eve of parliamentary elections, the government would, according to circumstances, either recall scores of Camorrists from exile, or send a new batch of them to the islands. Members of parliament, aldermen and mayors were often indebted for their positions to the chiefs of the Camorra, and were led both by gratitude and by self-interest to rescue these from the clutches of the police, and in some cases even to obtain impunity for them for the most heinous crimes.

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II.

The Neapolitan Camorra developed in the midst of a populous town and assumed the form of an organization with definite functions and names. It was, however, but an excrescence of society, without deep organic connection. The Maffia, on the contrary, was a spontaneous growth in the rural regions, and though far less definite in aim and organization, was more deeply rooted in the social organism. While the Camorra governed only a little world and exploited but petty interests, the Maffia permeated all social relations. Whereas the Camorra grew with the connivance of the government, the Maffia was ever in conflict with it. In the case of the Maffia, there was no established hierarchy, no set rules, no regular revenue. "The Maffia," says Professor Villari,[1] "has no written statutes; it is not a secret society, and hardly an association. It is formed by spontaneous generation." It adapts itself wonderfully to the environment, appearing in various forms. There are several Maffias, — high and low, country Maffia and town Maffia, Maffia of the mountain and Maffia of the plain or of the seaside. According to Messrs. Franchetti and Sonnino,

> people of every rank, profession and occupation, who have no other ties, unite for their common interests, without regard to law, justice or public order. They believe, as in the middle ages, that they can best provide for the safety of their own persons and of their own property by their own strength and personal influence, independent of all authority and law.[2]

In a country where the soil is extremely fertile, while very little is needed to support life, where towns are few and scattered, where communication between places is extremely difficult, where the government is distant and careless, and society has split into different classes in consequence of a long succession of foreign invasions — in such a country, the limit to the exploitation of man by man will be fixed, not by law, but solely by force. Class will be against class, man

[1] Lettere Meridionali, *etc.* (Turin, 1885).
[2] La Sicilia nel 1876 (Florence, 1877).

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will be opposed to man. Personal tyranny will be met with personal vengeance. Hence the necessity will be felt by every individual "to have friends," who will stand by him for good and for evil. Such associations, at first purely defensive, will become in time purposely offensive ; or rather, their character will vary so much according to circumstances as to make the continuity of their existence uncertain.

The conditions in Sicily before and for many years after the political unification of Italy answered to the above description. Even at the present time, Sicily contains vestiges of feudalism. The fief still exists in name and to some extent in reality. Tracts of land of from one thousand to six thousand hectares are rented by the proprietor to a "*gabelloto*," who sublets the holding in small allotments to tenant farmers, on practically a tenure at will, either for a fixed rent or in partnership, on the metayer system. In both cases, the result is the same: the tenant, to make both ends meet, is compelled to part with his cottage or with his cow, when he owns one, or to run into debt. The poor, isolated farmer is subjected to untold vexations. The *gabelloto* travels about on horseback, followed by mounted *campieri*, or field-guards, and servants armed from head to foot. The farmer has to feed the whole company and to keep them in good humor by continual presents. So long as he is humble and resigned, so long as he has no quarrel with justice and no "friends," he is considered as a "whetstone," or "a thistle to be trodden under foot." No one sympathizes with him ; he is badly fed, still worse lodged and is subjected to all sorts of extortions — by the *gabelloto* and his troop, by surveyors, bailiffs, brokers, tradesmen, carters, *etc.* But if he is brave and, in despair, commits a murder — for which he will not necessarily be punished — or if he appears to have "friends" who stand by him, then the despised peasant becomes a "man." The *gabelloto* first notices him, then tolerates him and finally takes him, willingly or unwillingly, into his personal service.

Like the land, the sulphur mines are also rented by the proprietor to a *gabelloto*, who deals with small contractors (*parti-*

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tanti) for the extraction of the mineral, according to an arrangement much akin to the "tribute system" in Cornish mines. The *gabelloto* robs the *partitanti* by using false measures and by subjecting them to frequent fines; and the *partitante* grinds the faces of his employees. Especially brutalizing is the treatment of children. Poor little things six or seven years old, bought from starving parents, are forced by the employer, whip in hand, to carry heavy loads of sulphur on their backs up ladders from three to five hundred feet long from the bottom to the mouth of the pit. Seldom or never does the miner receive his wages in money. Wares from the *gabelloto's* store, at exorbitant prices, are the customary form of payment. House rent is in many cases quite beyond the workman's means. Hence the custom of hollowing out grottoes in the hillsides to serve as dwelling-places.[1]

When a disaster (an explosion, more often a fall of earth) occurs in a mine and numbers of men remain under the ruins, the cries of the widows and orphans are stifled by the menaces of the gaugers and the *gabelloti*. The sub-prefect, the king's attorney, the *carabinieri*, the mayor and perhaps the local member of parliament visit the mine and have the corpses of the victims removed to the nearest cemetery; then a secret judicial inquest is held, and it is ultimately announced that no one is responsible for the catastrophe. Yet, some day, the *gabelloto* or the general manager, while lounging about the mine, may be struck down by a musket ball, coming from a secret justice, sterner and less partial than that of the courts-at-law. The Maffia has acted on a different conclusion as to responsibility from that officially announced.

Quite different from the Maffia which reigns in the agricultural and mining districts, is the commercial Maffia of the coast, which may be described as an association of

[1] Years ago, in the vicinity of Caltanisetta, whole rows of such grottoes might be seen. When, at night time, the little holes were lighted up, the mountain presented a fantastic aspect. One would have imagined a besieging army awaiting sunrise to attack the town. The government would not suffer the encroachment on its own property, and ordered the poor families off; but the women resisted, and at that time the order could not be carried out.

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brokers, shopkeepers, bogus-merchants and bogus-bankers, more or less bankrupt. Their object is to monopolize the produce from the interior before it reaches the market of Palermo, where another and "higher" Maffia — indeed the highest and richest (some of the members being millionaires) — is established. At harvest time every farmer in the country receives the visit of some mysterious individual, who wishes to buy "on behalf of his friends" such and such produce at such and such a price. The demand is couched in courteous, irreproachable terms; but if not granted, the maiming of the farmer's cattle or the destruction of a part of his crops will bring him to his senses. The Maffia of Palermo receives the goods and distributes them to wholesale and retail merchants, dictating its own terms. Besides, there are or were many syndicates or trusts, like the mill-owners' trust which was dissolved in 1882, whose object was to limit production, raise prices and share profits alike. This is supposed to be a legitimate object when attained by legal means, such as a war of prices and fines: in the case of the Sicilian trusts, however, the means employed to induce members of a trade to enter the combination or to keep their obligations toward the same were somewhat primitive, — destruction of property, gashing in the face and even murder.

The operations of the Maffia are by no means confined to economic matters. The mysteriousness of the institution arises from its manysidedness. If, at an election, wine and blows are freely distributed and the electors are driven to the polls to vote as one man, the unseen power which has been at work in the matter is nothing else than the Maffia. If, at a public auction, the bidders appear escorted by their "friends," apparently prepared for a sharp competition, but suddenly the leaders of the rival parties exchange greetings, their supporters withdraw, and a single bidder is left to secure the job practically at his own terms, — this result may be credited to the same unseen power, the Maffia. If, in a trial for murder, there is strong circumstantial evidence against the accused, yet witnesses are reticent or lie with effrontery in his behalf,

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the relatives of the murdered man plead for the prisoner, the court is crowded with the latter's "friends," and the jurors bring in a verdict of not guilty, the explanation is either that they were corrupted or intimidated, or that they themselves belonged to the Maffia.

The dominating spirit of the Maffia is that of oppression. Still, for most people, a career of oppression is a *pis aller*, the only alternative to being oppressed. The Mafiuso is a man who wishes "to be respected" (*farisi respectari*): that he may be respected, he has to make himself dreaded. And he strives to that end. He practices with the rifle or dagger, and prepares to face the dangers which await him. He "has blood in his veins," "has nerve," "is a man," and requires that his courage be acknowledged. A slight offense, an unseeming word, a show of resistance, and he will assail even to death a friend for whom he would have risked his life but a moment before. His reputation is precious to him — in fact is his only capital, and must be maintained at any cost. The slighter offenses against his dignity he must punish promptly and publicly. The more serious wrongs, however, he avenges secretly, especially those bearing the character of a treason, like the seduction of a wife by a friend. Should he cease to be highly sensitive in such matters, he would be treated as "carrion," would forfeit his "honor," would be stained in his character and would ultimately become a "whetstone" or a "thistle." He therefore acts chiefly in self-defense. He obeys the social necessity which in a rudimentary society (and perhaps even in the most civilized ones) compels every man "to die or to kill," or, in the words of an ancient German song, "to be hammer or anvil."[1]

The Mafiuso ignores the government as much as possible: he never accepts legal protection, and to turn informer is for him the climax of infamy. His first duty is the "*omerta*," loyalty to his caste — a tie which binds together the fiercest

[1] By overlooking the influence of "public opinion" on criminality, Mr. Lombroso and his school have been led to exaggerate the importance of individual factors. See G. Alongi, La Maffia, nei suoi fattori e nelle sue manifestazioni (Turin, 1887), and Prof. A. Umilta, Camorra e Maffia (Neuchâtel, 1878).

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enemies. Even on his death-bed, the assaulted man will shrink from naming his assailant, but trusts to his relatives and friends to avenge his death. Thus feuds arise, which last for generations.

Far from their native places, the Mafiusi recognize one another by means of a conventional language and a series of allegoric questions and answers; they are also distinguished by certain peculiarities in the bearing of their persons, in dress, gestures, *etc.* Tattooing is a favorite practice with them as well as with the Camorrists.

In the later stages of the history of the Maffia, some of the associations included under the name became very extensive in their membership and their sphere of action. The most successful of these associations was the "Fratellanza of Girgenti," which in its statutes, supposed to have been modeled on those of the Spanish *Mano Nigra*, claimed as its ultimate aim the establishment of the "universal republic."

III.

It remains for me to speak of brigandage. Even more than the Camorra and the Maffia, brigandage has been both too much extolled and too much decried. It has been regarded by some exclusively from the heroic side; by others, merely as savagery. In books and popular songs the brigand appears now as a redresser of wrongs, a friend of the peasant and benefactor of the poor, now as a brute, outraging women and slaughtering inoffensive people. As a matter of facts there is truth in both views. The brigand has been in turn a hero and a savage, a redresser of wrongs and an oppressor. Often in the same band, the chivalrous and high-minded rebel acted together with the depraved and bloodthirsty desperado. In the ranks of brigandage could be found the peasant who had been robbed of his farm; the young man whose sweetheart or sister had been the victim of the local squire's lust; sufferers from other forms of tyranny at the hands of the local oligarchy; people sick in general of their hard life (*mala vita*); and

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conscripts evading military service. There was not in these elements the greed or cruelty of the professional brigand.

With the purely political brigandage I have no concern. In 1800, after the French invasion, when under cover of liberty the country was subjected to a real foreign domination, with all its attendant evils, brigandage in southern Italy was only a form of political insurrection. The sons of Calabria repaired to the mountains, and in rude undisciplined warfare avenged upon the French soldiers the murder of their dear ones, the sack or destruction of their villages and churches, the outrages on their wives and daughters. The military authorities met this popular revolt with the methods customary in such cases. Captive brigands were barbarously dealt with, but they endured the treatment with a spirit that made them popular heroes, and stimulated rather than deterred imitators.[1] After the revolution of 1860, brigandage again became strongly political in its character. Now its basis was the hostility of the followers of the deposed Bourbons to the government of Victor Emmanuel. But at the same time the ranks of the brigand bands were swelled through discontent with various features of the regular administration, — the usurpation of communal land, oppressive taxation, the military conscription and the general tyranny of the local oligarchies. The cruelty displayed by the government in the suppression of political brigandage forms an indelible spot on the present reign.[2]

The common, non-political brigand adjusted his conduct to the circumstances of his position, which offered the most singular contrasts of abundance and privation, wealth and misery, power and weakness. To raise money the brigand had at his disposal various methods, from which he made his selection according to circumstances. He could attack travelers and mails; or make a sudden appearance at a country mansion or at a fair or in a quiet village; or send to some rich proprietor a written demand for the secret delivery of a sum of money at a

[1] *Cf.* Nicola Misasi, Racconti Calabresi (Naplés, 1881).

[2] See F. Lenormant, A travers l'Apulie et la Lucanie (Paris, 1881), p. 241 *et passim*.

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designated place; or, finally, he could capture wealthy individuals and demand of their families a heavy ransom for their deliverance. So, too, the brigand's general policy in reference to the population of the region in which he plied his vocation, varied according to circumstances. If he must needs earn the sympathy and support of the peasants, he would undertake to redress wrongs — would force the landlord to treat kindly his peasants, and oblige the rich libertine to endow the girl he had ruined. After a run of luck he would leave at a peasant's door a purse, the contents of which might rescue the finder from the clutches of a usurer, or procure a substitute for his son in the army.

When his business became prosperous the brigand found an accomplice in the bailiff (*fattore di campagna*), who not only was the general purveyor and trustee of the band, but often was the actual instigator of crime and a partner in the profits. Ultimately, a *modus vivendi* was established between the brigands and the landed proprietors themselves, the former couching their requests for money and provisions in the most courteous terms, and the latter gracefully complying with the same.[1] Then the brigands exercised many functions of an effective country police; they punished thefts, avenged murders and defended especially the persons and properties of their patrons. On occasion, too, they served as useful instruments for promoting, through criminal means, the interests of these patrons.

When this situation had developed, the brigands were in condition to maintain themselves well against the troops of the government. Their high protectors furnished them with the best weapons,[2] and gave valuable information as to the movements of the troops. There was a time when it was impossible to issue from the prefect's office at Palermo an order for the capture of a band, that would not come to the knowledge of the latter

[1] The very same thing was happening in the spring of 1893, according to the newspapers, in the province of Rome.

[2] The brigand Leoni had the first Winchester rifle imported into Italy — now in the royal armory at Turin.

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before the blow could fall. The military court-martialed peasants and shepherds caught bringing, through fear rather than sympathy, provisions to the brigands, while the latter feasted and reveled in the houses of their rich patrons.[1]

Thus brigandage evolved from a peasant's revolt to a permanent power. The bands perfected their organization, which came to include a sort of commissariat and counter-police, a treasurer, a secretary and sometimes a priest; for, however numerous and heinous their crimes, the brigands, as well as the Camorrists and the Mafiusi, were great devotees. The brigands passed from privation to comfort, from comfort to luxury. Inequality crept into the ranks; then jealousies arose, and at last an open war broke out between bands — a war which drove them to unprecedented acts of ferocity, and ended with the extinction of brigandage. Proprietors and bailiffs, however, retained the wealth they had acquired through their connivance with the brigands. The government was now able to collect taxes and fill up the ranks of the army. And the poor peasants began to turn their eyes to the new world, where they transferred, with their incredible endurance of work, their hopes for a better life.

To conclude, Camorra, Maffia and brigandage had their origin in the extreme oppression of the masses and the looseness of social bonds. They were at first defensive associations, or an organized revolt against political and economic oppression. As their power increased, they became aggressive, and the masses of the people lost their independence in regard to them. Ultimately they placed themselves under the protection either of large landowners or of the government. The Camorra indeed actually succeeded, for a short while, in usurping some functions of the government: whereas the Maffia retained to the last more of its original character, took a prominent part in the political revolutions of 1821, 1848 and

[1] It would be interesting to compare the latter-day brigandage, here described, with the primitive brigandage of the Kirghizes, the Touaregs, the Kolarians and the like. See Élie Réclus, Primitive Folk (London, 1891), pp. 269, 272.

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1860, and organized its own revolution, half religious, half social, in 1866 in Palermo. As to brigandage, it assumed at times the character of a strong military organization, and was a real power in the state. A few centuries ago, the ambitious plans of such associations might have been crowned with success; in our time they were bound to fail. To-day, brigandage as a system is entirely extinct, although there are still brigands or highway robbers in Sicily and at the gates of Rome. Of the Camorra and the Maffia a few survivors still linger in prison or in exile, while now and then imitations, like the *Mala Vita* and similar criminal associations, appear but soon die out.

S. MERLINO.

NAPLES, ITALY.

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CAPITALISTIC MONOPOLIES AND THEIR RELATION TO THE STATE.

THE fear of trusts and combinations that in 1889 assumed almost the character of a popular "scare," and bore fruit in a plentiful crop of statutes forbidding about all kinds of agreements on the part of business men, seems to have subsided. In 1892 only one state passed a general law on the subject; in 1893 two states passed laws of limited application; but the press and the pulpit have, relatively speaking, little to say nowadays on the subject, while the legislators in most states, having passed their bills and thus satisfied the clamor of the people, are content. Even the late outcry against the sugar monopoly is aimed at the politicians.

Yet, while the fear was doubtless exaggerated, whatever cause for fear existed then, still exists. Most of the trusts, to calm the feeling against them, reorganized as corporations; but their methods are the same, their effects are the same, as before. All the good things said by their managers five years ago as to their lowering the cost of production, steadying prices, raising wages, *etc.*, are as true now as then — and no more so; while the socialists, who hailed them as the forerunners of the socialistic state, have as good cause for joy now as they had then. Some few lawsuits have been brought; decisions have been made in favor of and against the trusts; but the principle of combination, of monopoly, is a natural one under present industrial conditions, and the new laws have had little effect beyond making the monopolists a little more careful, perhaps, as to the use of words, and possibly as to methods of action.

It is time that the public, with the economists, give up the idea that free, unlimited competition is the only normal condition of business, so far as fixing prices is concerned, and that

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they recognize the principle of combination and monopoly as equally normal in some places. Looking, then, at both sides of the question with unprejudiced eyes, we shall be better able to see the evils that undoubtedly exist on both sides, the advantages of both systems, and the best methods to adopt to further the good of the community.

The expression "capitalistic monopolies" has been used in the title to this paper because it seems wise to emphasize the fact that, in considering this problem, we can no longer limit ourselves to the discussion of natural monopolies. Between this class and that in which the monopolistic quality depends only on the great capital employed, experience has shown that there is no boundary-line, so far as effects are concerned. When, therefore, writers think to set bounds to socialism by putting the "natural monopolies" into the hands of the state and leaving all other industries free, they are setting no bounds at all.

By natural monopolies are generally understood all those industries that, after the plant is established, give a more than proportional product for every increase of capital. In fact, the expression usually means the railroads, the telegraph, the telephone, the street railroads, the gas and electric-lighting plants. But the possession of a very large capital and the unified organization of a large proportion of the plants in almost any industry, whether it be one of "increasing returns" or not, gives to that organization so decided an advantage over its competitors that it also is, to all intents and purposes, a monopoly. While it is not true of a sugar refinery, as it is of a railroad, that, after the plant is established, every added increment of capital properly expended gives a more than proportionate return — the essential characteristic of a natural monopoly: yet it is true that ten sugar refineries acting under a single organization, especially if well situated in different parts of the country, can furnish their product to consumers materially cheaper than can the same refineries working independently; and, this being true, they can crush or prevent competition as well as can a natural monopoly. To be sure, neither the Standard Oil Company,

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nor the American Sugar Refining Company, nor the Distilling and Cattle Feeding Company, nor any other of the capitalistic monopolies of the country has succeeded in completely stopping competition; but then, neither have the railroads or the other natural monopolies. Every gas company finds some competitors, if not in kind, at any rate in the lamp and candle makers — serious competitors often in the petroleum vendors. The electric railroad is still a natural monopoly, though omnibuses yet carry a few passengers over the same routes. Even the legal monopoly of the post-office meets with real though not technical competition in the district messengers, the express companies, and especially in the telegraph and the long-distance telephone. The essential characteristic of a monopoly is not that it shall be backed by a law, as in the case of patents, nor that it shall have no competitors of exactly the same kind, as usually in the case of street railroads, but that it shall so control the business, whatever it may be, as practically to regulate competition, and to fix the prices of its products, on the whole, with little reference to competitors or to the cost of production, but mainly with reference to securing the greatest net returns. If that is the test, the American Sugar Refining Company and the Distilling and Cattle Feeding Company have been more successful monopolies during three of the last five years than most railroads have been.

Now the striking fact about these monopolies and the many others of their class — and the fact that is of prime importance when one considers them in relation to society — is that they are able to get abnormally high prices solely because it is within their power to sell at prices below any that would have been possible under a system of free competition, as we have ordinarily understood that expression.

Let us first disabuse our minds of the popular opinion that free competition will furnish goods at low prices. Competition is usually very wasteful and expensive, so that goods produced under that system can rarely be cheap in an absolute sense. It is not denied that so far competitive prices have been on the whole lower than monopoly prices. The wastefulness of

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competition has often been shown, but it is not generally appreciated. The cost of competitive advertising, traveling salesmen, *etc.*, is enormous. Not long ago four or five leading tobacco manufacturers, who have since formed a combination, found, I have been told, that they were expending annually some three millions of dollars in bidding against one another, two-thirds of which at least could be saved if they were to combine and divide the sales in a fair proportion. Such magazines as the *Century* get $250 a page for advertisements. When one considers that a prominent brand of soap has frequently taken the whole of the best page of about all of the leading periodicals in every civilized country, one may form some dim idea of the cost. Of course, most periodicals are less expensive than the *Century*. A leading spice company of New York gives to its customers in premiums at times more than the regular prices of both spices and premium combined. For $37.50 one receives spices to that value and a premium of a $40 clock. $31.25 brings that value in spices and a $40 safe. For $25, a $29 watch and $25 worth of spices; $35 worth of spices and a $35 refrigerator for $50, *etc.* Now the quality of the spices is guaranteed; and the premiums are all standard makes, so that no question as to their quality is possible. The prices asked for the spices by this company are a little higher — twenty per cent, perhaps — than that asked by some of its competitors who do not give these premiums, but not enough higher to raise the ordinary retail price at all. The other firms have expenses in other ways, so that the retail prices are high in any case. Now all this advertising does not increase to any material extent the total amount of spices or of soap used. It takes business from one firm to give it to another; but it keeps up the prices of goods to consumers. The same remark, of course, holds good with reference to the cost of commercial travelers, and sometimes as to show windows and such means of selling goods.

Besides this enormously expensive system of advertising and of selling, there are many other losses in competition.

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Were all the leading manufacturers in almost any line united, the advantages that one has from excellent patents or improved processes of production would inure to the benefit of all. The cost of superintendence would be much reduced, and that of special expert knowledge could be diminished by from fifty to ninety per cent. The goods could be sent to customers from the nearest establishment, and thus a great cost of transportation could be saved. A large proportion of the capital employed in both plants and running expenses could be spared to other enterprises, as well as a goodly percentage of the labor. When the Whiskey Trust was organized, out of eighty distilleries that came into the organization only twelve were left running; yet these twelve during the first year had an output as great as the whole number the year before. Put the soap business or the spice business of the United States into the hands of one organization, whose business it should be to serve customers rather than to attract them from others, and it is probably not too much to say that we could all use just as many of these articles as we now do, and take our choice of the brands, at one-half the present prices, and still leave to the manufacturer a profit as large as he now gets. In other lines the saving would not be so much, but in all lines it would be great.

Doubtless, if such a change should be made, some laborers would be thrown out of employment; but those remaining might well receive higher wages, and the former could in time get profitable work elsewhere. Of course, the politicians will ask: But if all industries were thus monopolized, and men were everywhere thrown out of employment, where could they find work? And one is compelled to answer: I don't know. One knows, simply, that if prices drop materially, many products will be used in much greater quantities than at present, while many new comforts and luxuries will be found whose manufacture will call for capital and labor. If the product is cheaper, we shall have a wider market, and that without lowering wages. If it is asked: What new industries will start? the reply must be again: I don't know. But everybody knows that his desires

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for comforts and luxuries have always run far beyond his means of gratifying them, because the cost was so great. I believe that it is so with us all. Our demand will come at once for other things, if, by lower prices, some of our money now used in purchasing necessaries is set free. The importance of the workingmen, or the difficulty of finding employment, or the hardship of being out of work, is not underestimated. But the progress of civilization must come through improvements in methods of production, as well as through a better distribution and a wiser consumption, using those words in their older common sense; and we must not neglect any of these sources of saving.

TABLE I.

Average Annual Price in Cents of Refined and Crude Petroleum.

YEAR.	Price of Crude.	Price of Refined.	Difference.	YEAR.	Price of Crude.	Price of Refined.	Difference.
1870 . .	9.19	26.35	17.16	1882 . .	1.87	7.39	5.52
1871 . .	10.52	24.24	13.72	1883 . .	2.52	8.02	5.50
1872 . .	9.43	23.59	14.16	1884 . .	1.99	8.15	6.16
1873 . .	4.12	17.87	13.75	1885 . .	2.11	7.93	5.82
1874 . .	2.81	12.98	10.17	1886 . .	1.69	7.07	5.38
1875 . .	2.96	13.00	10.04	1887 . .	1.59	6.72	5.13
1876 . .	5.99	19.16	13.17	1888 . .	2.08	7.49	5.41
1877 . .	5.68	15.44	9.76	1889 . .	2.24	7.11	4.87
1878 . .	2.76	10.76	8.00	1890 . .	2.06	7.30	5.24
1879 . .	2.04	8.08	6.04	1891 . .	1.67	6.85	5.18
1880 . .	2.24	9.05	6.81	1892 . .	1.32	6.07	6.75
1881 . .	2.30	8.01	5.71	1893 . .	1.50	5.22	4.72

The fact that a monopoly saves much of the waste that of necessity takes place under free competition, shows what the real function of monopoly may be, either in the hands of the state or under the control of the state, or under any system so managed that its saving goes in the main to society instead of to the few monopolists. But, on the other hand, it must not be thought, because competition is wasteful and

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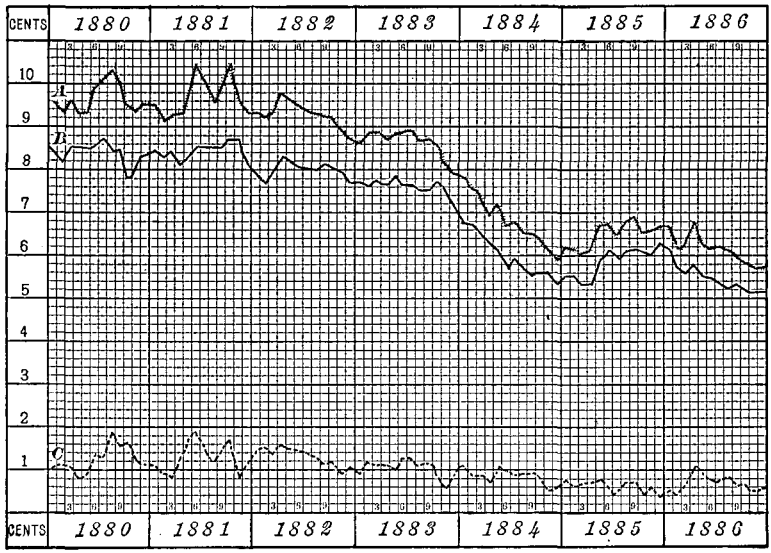
monopolies can make lower prices, that they generally do so. The solicitor of the Standard Oil Company has shown a good many times in print that the price of oil is much less now than it was before that company became so powerful. He has also shown that the difference between the price of crude and that of refined oil is much less than it used to be; and then he argues that the monopoly — which he says is no monop-

DIAGRAM I. —



A = Price of refined sugar (granulated). B = Price of raw sugar (96° centrifugal). C = Difference between A and B = cost of refining plus profits.

oly — has been a positive benefit to consumers. The argument is certainly very plausible. Still, the facts that he gives are not enough to uphold his argument fully. It is the natural tendency for the cost of production in all industries to lessen with the progress of invention; and this is especially the case with industries that are entirely new, as was that of refining petroleum only a few years ago. It may be seen from the price lists that the rate of decline has been very much less since the formation of the powerful central organization than

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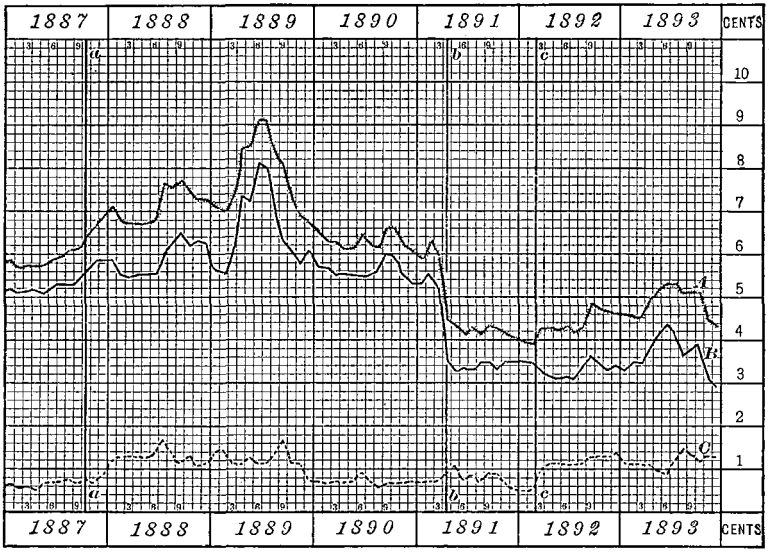
it was before. Indeed, there has been no regular decline that is really noticeable for the last twelve years.

The late developments in the processes of manufacture appear largely in a great increase in the side products — an increase that might enable the producer to lower the price of the main product without any lessening of profit.

On the whole, so far as this industry is concerned, we can say

The Sugar Monopoly.[1]



a. Organization of trust. *b*. Change of tariff. *c*. Union with competing refineries.

no more than that the defense has not fully made out its case, the probability being that the monopolization of the industry checked slightly the natural fall in price. Whether the dissolution of the trust has contributed to bring about the decline of the last two years, is an interesting question, but there is no reason to think that it has. The former trustees still,

[1] This diagram is constructed from a table of comparative quotations of raw and refined sugars, 1880–93, corrected by Willett & Gray, 91–93 Wall St., New York, and published in their *Weekly Statistical Sugar Trade Journal*, Feb. 8, 1894.

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as individuals, hold a majority of the stock in the old trust refineries, and of course control. The vigorous new partial competition is probably the real cause of the decline.

So far as some of the other industries are concerned, however, the case is perfectly clear. There is no doubt whatever that the formation of the Sugar Trust in 1887 resulted at once in a material increase in the price; that a partial breaking down of the monopoly, through adverse judicial decisions and the building of the Spreckels refineries in Philadelphia, resulted in the lowering of the price in 1890–91; while a later combination that has given the monopoly a control of some ninety per cent of the refining capacity of the country has resulted again in a serious loss to consumers through a decided raising of the price.

Notice Diagram I. When one reads in the *Sugar Trade Journal* the statement that "for the eight years preceding the formation of the Sugar Trust the net cash difference between raws and refined averaged 1.066 c. per lb., while the six years of the Sugar Trust and its successors show an average difference of 1.043 c. per lb.," one is likely to get a misleading impression as to the effects of competition and monopoly. A detailed study of the diagram shows that for some years before the formation of the trust there had been a fairly regular decline in either cost of manufacture or profits or both. In all probability competition had become at times so fierce that profits were small. We know that under pressure of competition great establishments often run for a time at a loss. But the effect of the combination, as given above, cannot be doubted. The manufacturers reaped a rich harvest. In all probability the cost of manufacture, particularly through the special facilities for securing raw material and for distributing the product under the combination, has materially lessened; but of this the *Trade Journal* takes no account. The late statement by one of the leading men of the company that, if the tariff on refined sugar were removed, they would be obliged to close their refineries, has a humorous effect when one traces the course of prices on the diagram.

The effect of the whiskey monopoly has been very marked,

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though this company has had a more checkered career than the other two mentioned; and to-day it seems to be struggling against difficulties, with the chances, however, in its favor.

The table and the diagram below[1] show that the raising and lowering of prices are matters determined at times almost by the caprice of the managers. The great increase at the beginning of 1893 was the reply to a proposition on the part of Congress to increase the tax. The last three years show enormous profits from the goods sold. It is true, however, that last year great quantities were stored, and sales were so low that large sums were borrowed to pay rebates. As the amount of the rebates given cannot be obtained from the company, the diagram does not accurately represent the profits, and accordingly the same reliance cannot be placed upon it for the last two years as for the earlier periods.

TABLE II. — THE WHISKEY MONOPOLY.

Market Prices at Peoria for Alcohol and Corn[2] from 1889 to 1894.[3]

	1889.		1890.		1891.	
	Alcohol.	Corn.	Alcohol.	Corn.	Alcohol.	Corn.
January . . .	$1.04	30 cts.	$1.03	27 cts.	$1.15	49½ cts.
February . . .	1.04	29½	1.03	26¾	1.15	51½
March	1.04	30	1.03	27	1.16	63¼
April	1.04	32½	1.03	31¼	1.18	69½
May	1.03	32	1.03	33¾	1.18	61¾
June	1.03	33½	1.10	33¼	1.17	56
July	1.03	35	1.11	39	1.17	59
August . . .	1.03	34½	1.14	48¾	1.17	60½
September . .	1.03	32¼	1.14	47¼	1.18	57⅔
October . . .	1.03	31	1.14½	49⅔	1.18	55⅔
November . .	1.03	32½	1.15	53¾	1.18	46½
December . .	1.03	29¼	1.15	49½	1.18	41½

[1] See p. 497.

[2] From each bushel of corn the average yield is about 4.6 gallons of alcohol.

[3] For prices from 1881 to 1889, see POLITICAL SCIENCE QUARTERLY, IV, 311 (June, 1889).

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TABLE II. — *Continued.*

	1892		1893.		1894.	
	Alcohol.	Corn.	Alcohol.	Corn.	Alcohol.	Corn.
January	$1.17½	37½ cts.	$1.28¾	40 3/16 cts.	$1.15	34 cts.
February	1.14½	39¾	1.17	39 11/16	1.15	32⅔
March	1.13⅖	38	1.17	39⅖	1.15	35 5/16
April	1.13	39¾	1.15	39 9/16	1.15	38¼
May	1.13½	44⅜	1.12⅖	40½	1.15	38
June	1.15⅕	46¼	1.12	37½	1.15	39
July	1.15	42¾	1.12	38⅞	–	–
August	1.15	49	1.12	37⅕	–	–
September	1.15	45½	1.12	38 9/16	–	–
October	1.15	41⅛	1.13½	38 9/16	–	–
November	1.15	41 9/16	1.15	37 9/16	–	–
December	1.26¼	40⅝	1.15	36	–	–

The study of the two diagrams, even with the allowances needed, shows that the monopolies concerned, in influencing prices, absorb far more than the waste from production under competition. To that waste they may be said to be entitled, economically speaking. They are not entitled, on economic or social grounds, to much more. Yet they are getting more.

These companies, too, might steady the prices of their products if they wished, and thus benefit the business world. That they accomplish this end is one of the chief claims of their advocates in their behalf. But the diagrams give no evidence of any material influence in this direction.

But, granting that the prices of necessities are somewhat higher than they would be under a system of free competition, what of that? Is it settled then, as is often assumed, that these monopolies ought to be suppressed, or that the community is any the worse off for their existence? It is clear that they really lessen the cost of production — that they generally use to good advantage, from the standpoint of production, the capital employed by them in production. Sometimes, perhaps, the certainty of a market begets carelessness in production; so far, however, this is not generally apparent, though con-

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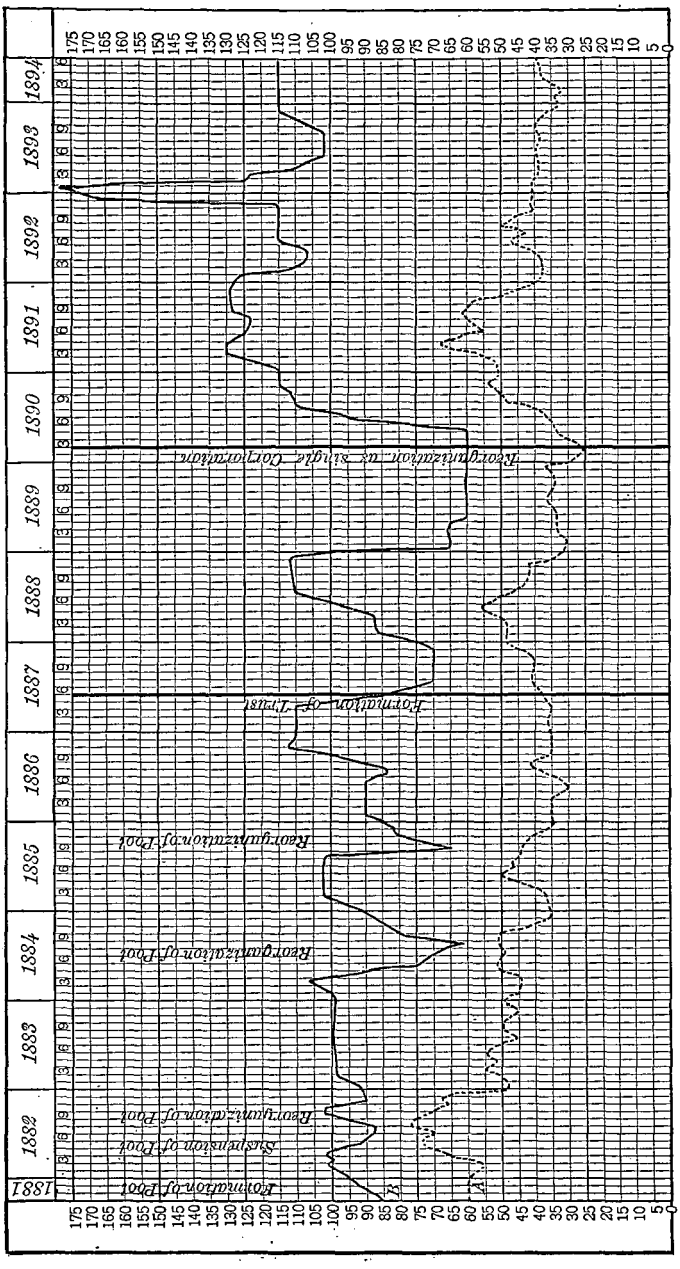
DIAGRAM II. — *The Whiskey Monopoly.*



A = Average monthly price of corn per bushel at Peoria, Ill. *B* = Average monthly price of spirits derived from one bushel of corn (obtained by multiplying the value of one gallon of spirits, less the tax of $.90 per gallon, by the yield in gallons from one bushel of corn). The space between the lines represents the cost of production plus the profits. For much of the *time* before the formation of the trust, assessments for export expenses must be deducted from the profits.

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tinued success is likely to make it more so. Does not the community then gain, as a whole, even if prices are higher? There has been really, by virtue of monopoly, a greater increase in the wealth of the country, proportionally to the capital and labor expended, than there would have been under a system of free competition. That is a benefit. Has the worse distribution, if it is worse, been enough worse to offset the clear gain? That is entirely a question of consumption. Nobody can answer it positively, because the problem is so complicated that its different factors cannot all be traced. But the line of argument on both sides may be indicated. So far as the monopolists of sugar and petroleum have squandered in useless luxury or in riotous living these extra gains of monopoly, society has lost as much wealth as it would have lost had the poor consumers of petroleum and sugar spent in the same way an equal amount saved from lower prices; but it has lost no more. It is doubtful whether the worse influence comes from wastefulness on the part of the rich or from wastefulness on the part of the poor. Within the last few years the gains in great part (I do not say a great part of the gains) of monopoly — the expression is not necessarily one of opprobrium — have founded two great universities for the free education of the people. Would the masses of consumers have made any better use of the money? Men whose gains have come in good part from natural or capitalistic monopolies are often at any rate no more to be blamed than those who under a competitive régime have built up a great business by skillful advertising. Men of both kinds have done great good, not merely by such gifts as have been mentioned, which are of course rare, but still oftener by investing their gains in other useful lines of business from which society has reaped yet other benefits from the productiveness of capital.

But, on the other hand, the chief source of social progress is probably the improvement of the masses of the people. This improvement, too, is likely to come first through the improvement in their economic welfare, through the raising of their standard of life. I am not sure that more good will not come

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to society from $10,000 worth of clean calico dresses which consumers have been enabled to save by lower prices of sugar and petroleum or by lower freight rates, than from the same amount of money spent in paying professors' salaries in the great universities, or in founding new lines of business. There is often a great civilizing, uplifting power in a clean new dress. On the whole, the chances are that money left thus in hands of the consumers of such necessities will be better used for the furtherance of civilization than if it goes to the monopolists. Building associations, in founding independent homes for the workers, are doing as much for society as are the founders of colleges; while savings banks and similar agencies make the poor man's small savings, when he makes capital of them, breed almost or quite as fast as does the capital of the rich man. But saving there must be, if society is to get this benefit.

Again, though monopoly prices are often high, many people have altogether too exaggerated an idea of them, thinking them far higher than they really are. A monopoly price is fixed not by the cost of production, but by the seller's calculation as to what will bring the greatest net return. A very high price is likely to result in such a falling off in sales that the net return will be lessened. Or again, especially in the case of what I have called capitalistic monopolies, a high price that might bring large returns for a short time would be likely to tempt new capital into the field to break the monopoly, so that in the long run lower prices would mean greater profits. This is even true in the case of many natural monopolies. The story of parallel railroads and of rival gas companies may be put by the side of the attack of Claus Spreckels on the Sugar Trust. Of course, in calling attention to this fact, I show the difference between the monopolies of which I am especially speaking and a legal monopoly, which fixes its prices without reference to possible competition, save what is likely to arise through the substitution of other products for its own.

The height of the monopoly price depends again largely on the nature of the product. If it is an article of luxury, it is

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quite possible that the monopoly price will be no higher than the competitive. Goods that are subject to changes of fashion, like ladies' hats or certain classes of gentlemen's ties, bring as much now as they would if their manufacture were a monopoly, and probably more. The efforts made to sell them often have an effect in determining the fashion. On the other hand, articles of necessity, or those which have become standard articles of consumption, like sugar, tea, petroleum, binding twine, common grades of cotton and woolen goods, *etc.*, are likely to be considerably lower under free competition than under monopoly. A study of the course of prices under the lead, linseed oil, telegraph and other combinations, besides those already considered at large, shows that the tendency of combination is clearly toward higher prices, in spite of the real saving made in the cost of production.

But in the investigation of this question others are to be considered besides the consumers. And first the competitors. It is sometimes thought that they are in an especial degree the sufferers from the monopolies. I have already shown that the competitive system is expensive, so far as prices are concerned. It is perhaps no less so in other ways. We all know how few are the business men who make enough of a success of their business to acquire great wealth. We more often overlook those who, under the pressure of competition, become bankrupt, and still oftener those who save their credit and their feelings by withdrawing from business in time to pay their debts, but not soon enough to save their invested capital. In lines of business where the amount of capital in most of the establishments is small — as in the retail grocery trade — a man struggles along all his life perhaps and makes a bare living, or he drops out of the race — he has lost — and few think of the loss; but there has been, due to his lack of skill, a relative waste of capital to the community. In business where the amount of capital in the different establishments is necessarily large, as in iron manufacture or in sugar refining, it may well be that competition is so severe that few of the establishments will make money, — nearly all of them indeed may lose, — and yet

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there will be few bankruptcies. Here, again, there is not merely a waste of capital (because such crowding is apt in the long run to result in expensive and poorly-made goods, from the inability to get the best men and machinery), but there is the uncertainty that makes hard times and stagnant business. Hard times do not tend directly to favor social progress. It is, perhaps, less exasperating to fall by the wayside and pay your creditors fifty cents on the dollar, without knowing just which rival it was that kept prices so low that you could not stay in the business, than it is to have the agent of a monopoly come to you and offer to pay you one-half what you consider your plant worth, with a threat of forcing you into bankruptcy if you refuse; but I do not know that society is worse off, from the industrial standpoint, in the second case than in the first. If your business is really in a flourishing condition, so that you can by fighting make serious competition, you can secure better terms than that; and often, indeed, it is a paying investment for a man to sell out to, or to join, a monopoly. It is doubtful if, in the long run and on the whole, our so-called "robber barons" of the monopolies are much harder on their competitors than is the system of free competition — and this from the standpoint of either the competitors or society at large; but their manners are rougher; and the social and political effects of their actions may be, and probably are, much worse, if the economic effects are not.

It must not be forgotten that I am speaking of industrial society as a whole, and not of individual cases. Many a business man is forced to the wall by a great monopoly, who, against single competitors, would do a flourishing business — and I may add, who would then force his weaker competitors of the still smaller class out of the field. On the whole, however, while we have probably overestimated sometimes the evil to industrial society that comes through the action of monopolies in crushing their competitors, still, when they employ unfair or even illegal means, as they have done at times, it is a serious, positive injury, and the competitors should be protected against such methods.

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Another class that needs protection of some kind against the monopolists are the investors in stocks. There is a popular impression that a person who holds railroad stocks, or the stocks of any of the great "combines," such as the Standard Oil or the Sugar Trust, is only a greedy monopolist or a "stock gambler," and that, whether he gains or loses, it is merely a case of "diamond cut diamond," and no sympathy is necessary. But this is not entirely true, and under better industrial regulations it would be still farther from the truth than it is now. There is a great need to-day for securities that are secure and yet that one can readily realize on. It is very difficult for people who are not actively engaged in business to find good investments. Usually they trust the matter to some business friend, and often their capital takes a good deal of business risk. Much has been lost in farm mortgages; and when mortgages are secure, they are not convenient. Now these great monopolies, if they were managed from a business, instead of from a speculative, standpoint, and if there were more publicity about their affairs, so that one might be able to judge the real value of the stock, would furnish an almost ideal opportunity for the investment of sums of all sizes. What business can be more secure than one that controls ninety per cent of the sugar refining of the country? People will surely make a market for the product. I suppose the same thing may be said of the whiskey combination. Indeed, one of the trustees of the old Whiskey Trust, before its reorganization, called my attention to this excellent feature of the trust form of managing business, and said that he would ask for no better or more secure form in which to invest his money for his children's sake. But what has been the experience? So far as I have been able to learn, and so far as the reports of the stock exchanges show, practically all such combinations have been so managed as to encourage speculation in their stocks; and one cannot resist the conclusion that in many cases the managers have deliberately sacrificed the interest of the smaller stockholders to that of those who were on the inside and knew what was to come. The appended tables of prices of stocks seem to show this.

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TABLE III. — THE WHISKEY MONOPOLY.

Monthly Prices of Stocks on the Exchange.

	1888.	1889.	1890.	1891.	1892.	1893.	1894.
January	–	31½	39½	47	59¾	59¾	26⅛
February	–	32½	39½	46	49½	38⅜	28½
March	49	35	38½	44	47 3/16	35 7/16	27¼
April	44	34	39	47	47 7/16	28½	26⅛
May	45½	–	43	45	46 5/16	19 1/16	24¼
June	41½	46	46½	47	48⅜	20 9/16	–
July	43½	43½	45½	46⅝	48	20 11/16	–
August	42½	45½	45½	44	49¼	18 1/16	–
September	40	44	45½	50⅜	52 15/16	22 3/16	–
October	36	40	47½	52⅞	62 15/16	30 13/16	–
November	39	39½	42	56	66¼	31¼	–
December	34	40	41	40	64¾	27	–

THE SUGAR MONOPOLY.

Monthly Prices of Stocks on Exchange. — Common Stock.

	1889.	1890.	1891.	1892.	1893.	1894.
January	–	58½	71	84¼	120 3/32	82 5/32
February	–	63 5/16	73 15/16	83 1/16	126¼	80 3/32
March	87¾	68⅛	75 14/16	94 7/32	111⅞	89 3/10
April	92¾	67 9/32	89⅞	96	104½	101
May	94½	84 7/10	87⅜	93⅞	88¼	105½
June	111 7/20	79⅝	86 1/16	97¾	87⅛	–
July	113⅝	76 5/32	81 1/10	101	78⅜	–
August	110 7/10	81 1/10	82	110¾	75	–
September	104⅛	78¾	90 1/16	109¼	88⅕	–
October	81⅞	73⅝	87 7/20	110⅝	94⅝	–
November	72½	57 19/32	87	109¾	97⅞	–
December	61½	55¾	86⅝	109 3/10	82¾	–

If it could be made certain that the management of these institutions would keep within the law, and if there were a reasonable amount of publicity as to the nature and condition of the business, this evil would be in great part checked. The evil is a great one, not merely for unfortunate investors, but

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for industrial conditions in general. It is not the place here to discuss the methods of promoting fair dealing in stocks; but some means ought to be devised for showing the public the relations existing between the face value of stocks and the value of the plant and business that they represent.

The fact may be mentioned that, as a rule, there has been little complaint against these organizations on the ground that they have directly lowered wages. If managed as they might be, conservatively, they could increase wages. They have done so in some cases. In others, by reduction of the number of establishments or by closing establishments at will to keep up prices, they have doubtless thrown many men out of employment, but probably no more than have been thrown out under free competition. The monopoly system is not necessarily opposed to a system of profit-sharing, and eventually we shall probably have monopolies managed on the coöperative plan, though this may be a long look ahead.

But the question arises: What, if anything, ought to be done by the state with reference to these capitalistic monopolies? Their representatives and advocates, claiming that they are not real monopolies, and that their tendency is to save in production and therefore to lower prices, demand that they be left alone to the action of free competition. On the other hand, the legislatures, acting under the influence of popular opinion, have proceeded upon the theory that such monopolies are exclusively evil in tendency and influence; and consequently all the legislation on this subject has aimed at the abolition and prevention of combinations. If, now, the conclusions of this paper are correct, both theories and methods are wrong. These capitalistic monopolies involve too much that is good and beneficial to society to make it advisable to abolish them. We ought to wish to preserve for society all of the immense benefits that come from this more nearly perfect form of organization. But on the other hand, we ought not to permit them to oppress society, as they have often done to a great extent, though not so much as has been believed.

They must be controlled — but how?

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Within a comparatively short time, it has come to be generally recognized that natural monopolies — railroads, and even street railroads and gas companies — cannot be permitted to carry on business as they will, but that they must be checked in some way. They must either be owned by the public, or strictly controlled by some public agent. Local companies are often limited by their charters, so that the public get part of the benefit of the increasing returns of the business. Railroads in many states have to report their business to a railroad commissioner, who makes public the condition of the roads and the nature of the management. Often the roads are limited by laws fixing the maximum passenger fares. The United States Interstate Commerce Law forbids discriminations in rates between persons and places, and provides for the determination of reasonable freight rates on occasion; and, while this law is at times evaded, it has accomplished its main purpose. In most European countries, the railroads are under even stricter control, being either owned and managed by the state, or else subject to the closest governmental direction as to the place and manner of construction and management, with the burden of proof on the road to show that its requests are reasonable and in the interest of the public. Now, as was intimated at the beginning, it is time to recognize the fact that not only common carriers and the so-called natural monopolies may threaten the interest of the public, and must therefore be under control, but that almost any line of business may readily put itself into a similar position. Perhaps as many people are affected by high prices of sugar and petroleum, as by high freight and passenger rates. For many years, in most civilized states, it has been a recognized principle of government that citizens must be protected by a careful governmental inspection and control of savings banks and insurance companies, so that nothing should be lost by foolish investments and speculation, or by fraud and embezzlement. Why is it not as much the duty of the state to see that people be given a better chance to make savings, as to watch over their savings when made?

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The difficult question is that of method and expediency. We do not need the arguments of our single-tax friends, that there are certain natural rights that must be secured to the people. Social expediency is a better principle. Society is a living, growing organism, and what was best for the people one hundred years ago may not be for their interest now; and what is best now must probably be thrown away within the century to come. The almost infinite complexity of industrial society, too, renders these problems of finding out the action that is socially expedient still more difficult and, if recklessly undertaken, dangerous. Legislation to meet new social conditions should be cautious, and more or less experimental in nature; but it should not try to kill the progress of society in certain ways, as has been the attempt of all our anti-trust legislation so far. Such attempts are bound to fail.

Recognizing thus the difficulty of the problem before us, and believing the socialistic plan of public ownership and management quite inexpedient, — to limit myself to my former word, — I suggest, somewhat doubtfully, the following principles touching the positive action of the state in respect to capitalistic monopolies:

1. The state should recognize the right of combination to an unlimited extent, under the form of corporation or trust, or otherwise. The form that will secure the most harmonious working, and hence, speaking generally, the cheapest cost of production, will be most in the interest of society.

2. The public must, in the interest of both consumers and investors, know the nature and general business condition of monopolistic organizations. Judging from the experience with railroads, banks and insurance companies, the best way to accomplish this result is through an inspector or a commission, with power to get sworn returns, to inspect accounts, to direct the nature of the reports, *etc.* Such investigation should be made when the inspector wishes, as in the case of the national banks, should be made at frequent intervals, and should be definite as regards real value of plant, extent of business and other matters of importance.

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This could probably be done in most states under the present constitutions. A great difficulty, at first, would be the determination of the industries to investigate and report upon; for the class could not be fixed definitely, as in the case of railroads or savings banks. Some cases would be clear at once, but presumably much would have to be left to the discretion of the commission, with perhaps the limitation at first that only those organizations be investigated that should attempt to control the necessaries of life. Under proper restrictions an investigation might be authorized on complaint made by competitors or consumers, of unjust prices. If the reports were well and fairly made, it is probable that in course of time such investigation and report would not be unwelcome to the industry concerned. Railroad commissions have shown that great benefit is to be derived from publicity alone, where no other power has been granted to the commission.

3. Ultimately certain restrictive legislation in the way of price regulation will probably be needed. Experience will gradually show what is best, but its probable direction may perhaps be suggested:

a. As railroads have been forbidden to make discrimination in rates between individual shippers, so a great monopolistic organization may be forbidden to make discriminations in prices between individual customers who are under similar conditions. This would hinder the special cutting of prices to force a single competitor out of business, as well as the building up of special dealers at the expense of others. The rivals that could not endure a general lowering of prices would be forced out of business or into the combination, — and this to the advantage of society, — while individuals would be protected against special attacks carried on against them alone with funds raised from high prices elsewhere. A survival of the fittest would be thus promoted.

b. It may be that in course of time something may be done in the way of fixing maximum prices, either absolutely, as with railroads, or proportionately to the rate of profit, as has been the case with street railroads; but such methods

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are at present probably quite impracticable. We may, however, now do much to prevent unreasonable prices. The Interstate Commerce Commission has perhaps indicated the way. This body has not done all that some expected of it; but it has done much. Probably — this on the authority of those who claim to know the freight business from long and extensive experience — before the Interstate Commerce Law was passed cuts were made on four times the freight that gets the reduction now and to twenty times the people who are now favored. The cuts, too, are now largely in the way of favors that come within the law. The commission has done much to keep rates steady and reasonable. An analogous commission for capitalistic monopolies could in the same way, knowing and publishing the conditions of business, readily determine whether the price charged for the product was unreasonable or not; and, upon complaint, might invoke the aid of the courts to reduce it if too high. I am aware that such action is difficult, but it is by no means impossible, as experience along similar lines has shown. Certainly such action would be easier now than later, when the monopolies will be more firmly entrenched and more disposed to resist. Now they will accept without much difficulty a fair settlement. Indeed, a chief difficulty of the wisest managers is to keep down prices as low as they wish. More impatient directors seek to hold them at a point that is sure to call new competitors into the field. Good profits could still be made at prices so low that no single competitor could enter the lists.

Much has been said of late about the taxation of monopolies as the best way of securing to society the "tallage" that they levy upon it through high prices. Granting that a practicable plan can be found to extract from monopolies the surplus gains of monopoly, we should need as much as at present the knowledge and publicity that we now fail to get. Taxation alone, moreover, could not prevent the unfair discrimination between customers, and the unjust, not to mention the illegal, means now employed at times to crush rivals. Would it not, indeed, if employed alone, tend to sharpen the conflict?

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We cannot expect to regulate such industries without trouble, but in the long run society is equal to the task; and the industries themselves will, perhaps, welcome some such solution as that indicated, in preference to more violent methods.

Objection may well be made that such proposed remedies savor strongly of paternalism, socialism and the like. It may be. But let us at least recognize modern conditions and deal with facts. The days of free competition and the individualism consequent upon it seem to be past. Competition still exists in certain lines of industry. It will last there a long time yet. But in all lines of industry where advantageous use can be made of great capital and the consequent complex but very efficient organization that goes with it, there is no longer the free competition that earlier economists took as the basis of their reasoning, and that the great mass of the people still assume to be the normal condition for business. There is still in these industries much battling of the giants; but such conflicts are exhausting, and more and more often we see, and still more often shall we see the exhausted contestants making first a truce and then a firm alliance for offense and defense. I expect to live to see the day when the political economists, to be as near the normal conditions of society as they can be in their assumptions for deductive reasoning on questions of the production and distribution of wealth, must consider that a very large proportion of the productive business of society is on a monopoly basis.

These great combinations of capital are here: they are a normal form of business enterprise of the day. They have great advantages that can effect great benefits for society. Society, therefore, ought not to destroy them. But as they have also great power for evil that threatens society, we should be wise enough and manly enough to control them, and we should act quickly.

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THE QUESTION OF UNIVERSITIES IN FRANCE.

FOREIGNERS who come to complete their higher education in France — in 1890 there were more than a thousand of them in Paris, and nearly two hundred of these were North Americans — have at first much trouble in finding their way among the numerous schools, faculties and other establishments of higher education whose notices cover the walls of Paris at the end of October.[1] Shall they go to the Sorbonne, to the *Collège de France*, to the *École des Hautes Études* or to the *Muséum?* Their surprise is increased when they learn that besides these schools, which they may enter, there are others not open to the wayfaring scholar, the *École Normale* and the *École Polytechnique*. If, seeking a clue through this labyrinth, they ask: "Where is the University?" they are told that there is none. Among the faculties, schools and colleges there is no bond of union: they are not parts of a whole. This extraordinary variety of organs is not the result of a highly developed specialization of functions; for very many positions are duplicated. The explanation is historical. The existing state of things is the result of the successive creation of establishments of different types, all of which have held their own and are to-day in rivalry with one another. The *Collège de France* dates from Francis I; the Faculties from the First Empire; the *École des Chartes* from the Restoration; the *École des Hautes Études* from the Second Empire. The district of the Parisian schools, the "Latin Quarter," resembles a park in which new trees have continually been planted without uprooting the old trunks. These last have thrown out fresh shoots: new and old have both grown luxuriantly, and the park has become a tangled thicket. It is no wonder that foreigners lose their way in it, for the natives of the country

[1] *L'Alliance Française* announces (April, 1894) that it will henceforth publish annually, for the use of foreign and particularly of American students, a list of the professors engaged in higher instruction and of the courses offered by them.

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cannot always find theirs. It is now proposed to run paths and open vistas through this wilderness.

For more than fifteen years a public agitation has been carried on by men of eminence in favor of the creation of universities in France. Two years ago a bill to this effect was submitted to the Senate by the minister of public instruction. Sooner or later some such law will be passed. It seems a fitting time to explain the real nature of this important question. The explanation involves a brief history of the higher education in France during the past hundred years.

I. *The Higher Education down to 1868.*[1]

There are but two types of higher education — the special school and the university. The former is devoted to the cultivation of a particular science, and admits only so much of other sciences as is serviceable to its main purpose. The latter is open to all the sciences, to all branches of letters, uniting them all in a harmony that may be compared to that of the faculties of the human mind, or to that of the laws of nature.

In the middle ages France had famous universities, but they came to a bad end. Long before 1789 their four faculties had ceased to be centers of scientific activity. The faculties of theology, of law and of medicine actually fought against the spirit of science in behalf of the spirit of tradition. They had grown intolerant, and had clothed themselves in a spiny armor of Gothic prejudices. The only instruction they gave was narrowly professional. The faculty of arts made no provision for the advanced study of science and literature. It had lowered its plane to the work of preparatory and elementary instruction in rhetoric and the humanities. This decadence began at an early date. In the sixteenth century Francis I had sought to check it by setting up, face to face with the proud Sorbonne, where the faculty of theology had

[1] *Cf.* L. Liard, Universités et Facultés (Paris, 1890) and L'Enseignement Supérieur en France, vol. ii, 1789–1893 (Paris, 1894); H. Taine, Les Origines de la France Contemporaine: Le Régime Moderne, vol. ii (Paris, 1894); *Journal Officiel de la République Française*, March, 1892.

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its seat, the equally famous *Collège de France*. This college was to be the refuge of pure, speculative, disinterested science.

The Revolution respected the *Collège de France*,[1] but swept away the four faculties which, taken together, still bore the name of University. In the place of these decrepit organizations, whose destruction was scarcely to be regretted, the philosophers of the Convention, Daunou, Condorcet and Talleyrand, proposed to establish "institutes"—vast scientific workshops, furnished with the necessary apparatus and endowment for free research in every direction. But their plans were not carried out. Under the pressure of circumstances and by way of provisional arrangement, another system was adopted—that of special schools. Attacking the most pressing problems, the Convention created the *Muséum d'Histoire Naturelle* to educate naturalists, the *École Polytechnique* to educate military engineers, and the *École de Santé* to educate physicians. Later, under the Consulate, special schools were established for law and for pharmacy. These also were strictly professional schools.

The Empire was hostile to science, because science is at once a result and an inspiring cause of liberty. The Empire had no use for independent personal views beside or beyond the Napoleonic orthodoxy. It was therefore bound to adopt and to intensify the special-school system which the Revolution had indeed established, but as a provisional arrangement only, and without abandoning the ideal of a better order. The Empire, it is true, resuscitated the Faculties, but in a thoroughly imperial form. The imperial Faculties were not connected; they were set to work each at a special task; they were principally busied with giving degrees. In spite of their name, they were organizations completely analogous to the special schools of the Convention. The Faculties of Medicine simply took the place of the *École de Santé* established by the Convention, and the Faculties of Law that of the law schools

[1] For the history of the *Collège*, see the excellent book by Abel Lefranc, Histoire du Collège de France (Paris, 1893) and the review of M. Lefranc's book by the present writer in *Revue Politique et Littéraire*, Feb. 17, 1894.

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established under the Consulate. The *École Polytechnique*, the *Muséum* and the *École Normale* (a training school for teachers in the secondary schools) were preserved.

It is important to understand thoroughly the spirit and the results of the Napoleonic system, for it has weighed on France for nearly a century, and it is this system that we are struggling to get rid of to-day.

Society needs engineers, architects, physicians, lawyers, teachers, officials. The Napoleonic state undertakes to provide society with all these things — and this is the purpose of the special schools. It provides them finished, stamped and warranted — that is the purpose for which it keeps in its hands the giving of degrees. All that the state has to do is to make sure that each specialty which it furnishes to the consumers is a good and trustworthy article of its kind. It does not trouble itself to inquire whether the specialist is also a man of culture, whether he has tasted the fruit of the tree of knowledge, whether he has learning or philosophy. It has placed at the threshold of the technical schools what seems to it a sufficient barrier : no one can enter them until he has pursued certain studies, until he has passed his examination for the bachelor's degree. In the view of the Napoleonic law-giver this degree — which simply certifies an elementary knowledge of Latin, Greek and French, with a smattering of history and logic — proves that he who has taken it has all the preliminary culture that is necessary in order to enter any of the so-called liberal professions. The government supposes that when the bachelor's degree has been taken, the general education is complete. In fact, it would view with suspicion any higher culture, any scientific curiosity, any sort of taste for research and discovery. This is precisely why it has a horror of the all-round universities after the German style, which aim to secure freedom of instruction and the untrammeled advancement of knowledge. This is why it seizes the young man without giving him time for reflection, at the very threshold of his life, and promptly shuts him up in one of the professional schools — Faculty of Law, Faculty of Medicine,

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Normal School, Polytechnic School, *etc.* — which have for their single purpose to create, determine and guarantee in him a definite practical capacity. "I do not ask you," said Napoleon to the masters of the Normal School, "to make me literary men, wits, ideologists; make me governors." "I do not ask you," he might have said to his law professors, "to train sociologists; make me attorneys, counselors and judges." In medicine he would have similarly preferred practitioners to really scientific men.

The governments which have followed each other in France since the fall of the First Empire have not broken with its traditions in educational matters. The Napoleonic system has lasted; it has moulded without hindrance one generation after another down nearly to 1870. One man indeed, in the reign of Louis Philippe, had the purpose to destroy it and to put in its place "great centers of study and of intellectual life." This was M. Guizot; but he was forced to abandon his plans, because he was not encouraged by public opinion to carry them through.

> As regards the higher instruction [he wrote] the public in my time had no desires whatever; it was not preoccupied in this matter by any great idea or any impatient longing. . . . The advanced instruction, organized as it was and given as it was, was sufficient for the practical needs of society, which viewed it with a mixture of satisfaction and indifference.

Seventy years did not pass, however, without some changes in the details of the imperial organization.

(1) From time to time new and different special schools appeared. It had not occurred to Napoleon to provide for the manufacture of librarians and keepers of the archives; the *École des Chartes* was established for this purpose in 1829. And when, at a more recent date, it was remarked that the history of art was taught nowhere in Paris, a special school for art history was promptly created, the *École du Louvre*. We have since witnessed the establishment of the *École des Sciences Politiques*, the *École Coloniale*, the *Institut Agronomique*, *etc.*

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(2) A gradual change took place in the character of the instruction given in the special schools, and this change produced results which must be carefully noted. The special schools, in accordance with the spirit in which they were established, remained almost wholly professional down to the middle of the century. Although this system, in my opinion, was very inferior to that of the German universities, in that it sacrificed the highest culture for the sake of direct utilitarian purposes, it was still a defensible system; it was of great practical service. But this system began to be modified in a peculiar way, and not for the better, about fifty years ago.

Since the beginning of this century [says M. Hippolyte Taine] discoveries have rapidly increased in all branches of science, and these discoveries have, of necessity, finally forced their way into the system of public instruction. In their attempt to secure a place and speak *ex cathedra*, they found in Germany those encyclopedic universities in which a free, flexible and varied system of instruction constantly raises itself by its own efforts to the rising level of science. In our country, in default of universities, it was only in the special schools that a place could be found for these discoveries. As a result the distinctive character of these schools began to be changed. Each of them, because it had a distinct organization of its own, wished to have at home, and to furnish under its own roof, all the general and accessory instruction which could be of immediate or remote value to its students. It was no longer satisfied with turning out competent practitioners; it began to conceive of a higher type of physician, jurist, professor and architect. It became or tried to become a sort of university on a small scale, gathering within its walls all the subjects of instruction which, if the student profits by them, will make him an accomplished member of his profession.[1]

Let us now consider the consequences of this evolution of the special schools towards a more complete and more theoretic teaching than they originally gave. The first result was a great increase in the number of chairs and, at the same time, a duplication of positions. Instead of one great university, there were as many little universities as there were schools. A further result was the overloading of the curricula of these

[1] Le Régime Moderne, p. 269.

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schools. In a school with a fixed curriculum and a fixed number of regular pupils (boarders), every subject of instruction has to be backed up by an examination; the student enters the school, stays in the school and graduates from the school only by virtue of examinations; his anxiety about his examinations is necessarily so acute that it shuts out all other ideas. As a last result we have the extraordinary fact, that after three, four or five years of study in a professional school — and very hard study, too, on account of constant cramming for examinations — the student leaves it with a very respectable outfit in the way of theoretic knowledge, but with absolutely no practical experience. In his three years of study in the Normal School, the future professor has never once taught a class; in his two years of study in the Polytechnic School and his three additional years in the *École des Ponts et Chaussées*, the future engineer has never directed a squad of workmen or seen a bridge built. The doctor of laws, in his five years of special training, has never set foot in a court of justice. Not one of these men knows his trade, and they all think they know it — a delusion that is often dangerous as well to themselves as to others.

To sum up: the young men of France who propose to enter the liberal professions are shut up in special schools. These schools are established to give a technical education, and they still pretend to give it. But by depriving the student of all the teaching that is derived from personal experience and outside life, these schools sterilize him; by loading him with examinations, they exhaust him; by cramming him with theories (and often with useless theories), they intoxicate him with dangerous illusions and frequently unfit him for the positive and practical work of his after life. Nor is this all. While these special schools have ceased, since 1850, to turn out practitioners, they do not furnish anything like as favorable a soil for the development of scientific capacity as would have been furnished by a real university with freely elective courses. A graduate of the Polytechnic School is a poor engineer, but he is not on that account a scientific man. A graduate of the

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Normal School is a teacher without experience, but he is as little fitted to carry on an investigation as to teach a class. Both have their minds stuffed with any quantity of elementary theories, but they have never got to the bottom of a single one. They know many (too many) things which a practitioner can afford not to know, and they do not know the things which they need to know; but for all that, they have no notion whatever of the spirit or methods of scientific investigation.

A final stroke will complete the sketch of the changes which Frenchmen of this generation have witnessed. The special schools, like living organisms, have grown with age; hence the multiplication of their chairs of which I have spoken above. At the same time they have struck root deep in the national life. Everywhere in Europe the university student is a popular personality; he is concerned in all liberal and patriotic demonstrations. Now since, during the greater part of the century, there have been no real university students in France, the students in the schools have played this part and reaped its advantages. The uniform of the Polytechnic School shone in the front ranks during the revolutionary conflict of 1830; the Normal School was a hot-bed of opposition to the Second Empire, and has been a center of antagonism to clericalism under all forms of government. The French middle class, of which a notable part is now connected with graduates of the special schools, regards these schools with affection and respect. Its dearest ambition is to put its sons through them; its liveliest astonishment would be aroused if any one dared to lay a sacrilegious hand upon them. There are many people in France to whom "normal-school graduate" is the synonym for a man of letters, and "polytechnic graduate" for a man of science. From the rich soil of favoring prejudices the special schools draw a strength and sap which have secured them and will long continue to secure them against destruction and even reform. It should be added that among nearly all the graduates of these schools, instincts of solidarity and of comradeship form an exceedingly strong bond of union. The "old students," who to-day hold high positions in the

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state, would hardly permit any interference with their schools.

(3) While the special schools were thus growing in size and in strength, and passing through the evolution I have just described, what had become of the Faculties? I do not allude to the Faculties of Law and of Medicine, which were really special schools under a deceptive name, but to the Faculties of Science and of Letters, which were almost the only organizations in the Napoleonic system capable of development into scientific *university* organizations.

These Faculties were charged with the giving of degrees, but they were not required to give technical instruction. The time which they did not employ in holding examinations, they might have been expected to employ in speculative and original investigations. In order to explain why they did nothing of the sort, it is necessary to consider their position, their resources and their opportunities during the first fifty years of their existence. These were wretched beyond belief. Badly furnished and inadequate buildings, no libraries, no laboratories, no apparatus! No students even; for nearly all the possible students were studying in the special schools. Five or six chairs only in each Faculty; so that the same professor was almost everywhere charged, in natural science, with the triple burden of zoölogy, botany and geology; in letters, with the teaching of universal history and universal geography. Wealthy France did not spend a million francs a year on her Faculties; on the contrary, the examination fees collected by these Faculties more than covered their expenses and turned a yearly surplus into the treasury of the state.

What could a professor in one of these Faculties do with his time in the intervals between examinations? Having neither books nor students, he could not dream of organizing scientific workshops like those of the German universities. He had and could have but one ambition: to attract and hold the greatest possible number of amateur hearers by a lively and agreeable style of lecture. The lecture rooms were warm in winter,

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cool in summer. This was already one reason why persons without other occupation should come to keep warm or cool, according to the time of year. There are, moreover, in the provincial towns as well as in Paris, many persons with vague scientific or literary interests who are ready to kill time in listening to lectures; and finally there are the women who have nothing to do. These audiences of women, dilettantes and loafers lavish applause upon those who amuse them; but the slightest attempt to make them listen to the austere voice of science and learning puts them to flight. To please and flatter these people, to win their approval — this unfortunately was the whole effort of the Faculty professors. If they scorned such cheap applause they were left in isolation and were regarded as devoid of ability.

I shall never forget [says M. Liard] what happened to me at the beginning of my work in the Faculty of Bordeaux. During the winter, all went well; my hearers were numerous and seemed attentive. In the spring there was no serious falling off. But when the summer came, they nearly all disappeared. And what was the reason? At the hour at which my lectures were delivered there were, in summer, weekly parades of the troops. The regiments passed before the Faculty building just as the lecture was beginning. At the first distant notes of the approaching bugles and drums, the audience filed out, followed the music, and never came back.[1]

These circumstances developed in the French Faculty professors the national fault of empty, ornate and superficial eloquence, such as pleases the half-educated public. I certainly do not mean to say that during this period the members of the Faculties did not produce some excellent works, like *La Cité Antique* of M. Fustel de Coulanges; but such achievements were very exceptional. Outside of Paris the Faculties did nothing for half a century but furnish passing entertainment to idlers and blue-stockings. In Paris itself the same causes would have produced precisely the same results, if the stage had not been broader, the public larger and the masters men of more unusual talent. The extraordinary brilliancy of

[1] Universités et Facultés, p. 22.

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the instruction given in the Sorbonne by such professors as Cousin, Guizot and Villemain partly disguised its inadequacy. Towards 1840, the lectures of the Paris Faculty of Letters at the Sorbonne, supported and stimulated by the Liberal party, were among the most ringing utterances of the thought of France. The eloquence of a few great men enabled them to exercise, from their professional chairs, a marked influence upon their time. Ever since then it has been understood that a professor in one of the Faculties must be "eloquent." A great part of the French middle class still regards the Faculty professor as a man who talks well and holds examinations, but not at all as a scientific man.

To sum up: it seems to me that the condition of the higher instruction in France before 1870, was analogous, *mutatis mutandis*, to the condition of the English universities. Everybody knows that, from the fifteenth century down to a very recent period, the universities of Oxford and Cambridge were divided into a swarm of independent colleges; that these colleges were rich, provided with princely buildings and libraries, with teaching bodies and with students; that in both cities the university proper was comparatively poor, had hardly any students of its own ("non-collegiate" students), and almost no professors; that the professors whom it had retained preached in the desert; that the only actual instruction was given inside the jealously closed colleges. The university, once a living reality and a teaching power, was reduced to a majestic abstraction — a convenient designation for the totality of the real entities, the colleges. It had kept in its hands only a general staff of dignitaries, some buildings, and the bestowal of degrees. Now, is there not a structural resemblance between this system and the Napoleonic organization in France? The Faculties of Letters and of Science correspond perfectly, from a morphologic point of view, to the English university: they also have dignitaries who wear historic costumes, and they have the bestowal of degrees; but they have no students, and their teaching is a fiction, for the real instruction is given in the

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special schools — the Normal School, *etc.* — which roughly correspond to the English colleges.

In the last twenty years the universities of Oxford and Cambridge have regained a considerable part of their old vitality at the expense of the colleges. I have now to explain what has been done in France to remedy the unfortunate state of affairs described above.

II. *The Reform of the Higher Education.*

The Napoleonic system, in spite of some timid and isolated protests, remained substantially unchanged until 1868. The first suggestions of reform date from this period and from the ministry of M. Duruy. This minister started an investigation into the condition of the higher instruction in France, and invited competent persons to express their views freely. The investigation proved both the inadequacy of the system in force and the clear-sightedness of some of those who were living under it.

> The university spirit [said M. Chéruel, rector of Strasburg] is everywhere extinguished. . . . Knowledge, divided like fractional currency, has been distributed in little sums, and the restricted schools multiply to the detriment of the great ones.[1]

The result of this investigation was not an internal transformation of the Faculties, nor the suppression of any of the special schools, but, surprising as it seems at first, the establishment of a new organization independent of all those which previously existed, and which were left as they were. This new organization was the *École Pratique des Hautes Études*. "I am planting," M. Duruy said to his confidants, "within the walls of the old Sorbonne, seeds which in growing will completely wreck it." M. Duruy, in fact, considering the Faculties incapable of discharging the scientific functions of the higher instruction, established in the Sorbonne, side by side with the Faculties, a new body entrusted with the discharge of these functions. He judged that "from this

[1] Liard, L'Enseignement Supérieur, ii, 283.

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organization, with which the Faculties were henceforth to live in contact, the scientific spirit would filter into them by a gradual exosmosis."

The *École des Hautes Études*, in distinction from all the other schools, is an "open" school, in that it is not necessary to pass any examination for entrance; but it is closed to transitory auditors, for it is necessary to be matriculated in order to follow its courses. It subserves the same purpose as the *seminaria* in the German universities. Its *conférences* are workshops, in which masters and students work together, in an informal and friendly fashion, at scientific problems. After three years of attendance and the presentation of an original dissertation which proves experience and erudition, the student obtains, without any other sort of examination, the diploma of "certified graduate" (*élève diplômé*) of the school. "No program is imposed upon the masters: it is only required that they be competent directors of the workshop and that they train good workmen in science."

This school, founded in 1868, was at first divided into four sections: (1) the mathematical sciences; (2) the physico-chemical sciences; (3) the natural sciences; (4) the historical and philological sciences. A fifth section, that of the religious sciences, was established later, after the suppression of the Faculties of Catholic Theology. This means that the *École des Hautes Études* to-day constitutes a complete university. And if the word is taken (as I think it should be taken) to describe an institution where science is cultivated for its own sake, without asking what it is good for or what it leads to, this school is really the university of Paris. Foreigners are not deceived on this point: it is the only institution in Paris which they attend in large numbers; it is the only place in that city where Germans, Russians, Swedes, *etc.*, find something like what they have at home; and it is very fortunate that foreigners are thus attracted to the school, for were it reduced to having only Frenchmen as students, it would not have many. Since it prepares for no career, it is ignored by the French public; since the diploma which it confers has no

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legal value, and since public opinion gives it no such moral value as German opinion attaches to the doctorate of philosophy, very few persons try for it. The *École des Hautes Études* is really, like the *Collège de France*, and for the same reasons, a university without students.

We may congratulate ourselves that when M. Duruy founded this school, he had little money to dispose of; for, had he had the money, a large sum would probably have been expended in the erection of a suitable building. It would then have been a second *Collège de France*, an indestructible institution, rooted to the soil. Fortunately, on account of the lack of money, the school was housed in a haphazard way in the garrets of the Sorbonne, and it has always preserved a character of unsubstantiality. It is simply a collection of scientific men, among whom the sense of solidarity and the egoism that characterize all old corporations have not developed. As soon as the Faculties resume the university functions which they have too long neglected, the *École des Hautes Études* can readily merge itself in them and disappear.

The purpose of M. Duruy in creating this school was, as we have seen, not to destroy the other institutions of higher instruction by means of its rival attractions — that would have been a rash undertaking — but to plant a tree whose seeds in time would scatter themselves over all the surrounding fields. As a matter of fact, the scientific spirit of the *École des Hautes Études* has exercised a beneficent influence. If the Faculties are to-day partly awakened, this result is due in some degree to the good example of the school founded by M. Duruy.

We must now briefly consider the evolution of the Faculties from the fall of the Empire to the present time. The outcome of the war of 1870 compelled France to search her conscience as a first step towards regeneration. Eminent men, MM. Renan, Bréal, Monod, Lavisse, undertook to enlighten the public on educational matters. There was no doubt, in their opinion, that the worthlessness of our higher education was one of the causes of our decadence. "It is German science," said M. Renan, "that won the day at Sadowa and at Sedan."

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It was brought home to us that the German national spirit was a product of the German universities, and the German fatherland a product of this spirit. "From this moment," to use an expression of M. Liard, "the reform of the system of the Faculties became in France a matter of patriotism." It had needed this terrible shock to disturb public opinion.

The most imperative needs were first considered. The Faculties, as we have seen, had neither buildings, nor appropriations, nor libraries, nor laboratories, nor a sufficient staff of professors. It was necessary to give them all these, at whatever pecuniary sacrifice. There is good cause to admire the resources that were exhibited by a vanquished and exhausted country; it expended them without hesitation to do all that could be done with money for the reform of higher education. In 1871, the appropriation for the Faculties was 4,300,000 francs; in 1877 it had been increased to 7,799,810 francs. In 1889 it amounted to 11,391,495 francs. Since 1877 there have been established 67 professorships, 168 supplementary lectureships and 129 readerships (*maîtrises de conférences*), making a total addition to the teaching force of 364 persons. The amount paid or pledged for the construction of buildings, laboratories, *etc.*, rose to more than 99 millions, of which 47 millions were furnished by the state and 52 millions by the cities. Before 1879 there were no university libraries. To-day these libraries have more than a million volumes. France is now spending almost as much money on her Faculties as Prussia is spending on her universities.

Has this immense outlay been rewarded by the desired results? Without money, of course, no progress was possible; but money is not all that is needed. Money is like a fertilizer; plants grow badly without it, but it will not develop good plants from seeds organically poor. We have already seen that the higher instruction in France was organically bad. It remains to inquire whether it has been improved in proportion as the conditions have become more favorable.

If the problem were to be approached from a purely rational point of view, without regard to the actual circum-

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stances which impede a logical solution, the reëstablishment of universities in France would require three radical and even revolutionary changes, and these would have to be carried through simultaneously.

(1) *Suppression of the special schools.* — Besides the fact that the special schools absorb every year very large sums of money, they also absorb the most promising students. To restore to the Faculty of Science the youth whom the Polytechnic School now secures; to restore to the Faculty of Letters those who now attend the Normal School — will be a sure means of giving life to these Faculties. Moreover, from the day when the Faculties assume their proper position, there will be no reason for prolonging the existence of the *École des Hautes Études* or even of the *Collège de France;* they can then be dissolved and disappear. In fact none of the schools in France need be preserved except those in which some very practical and technical branches of knowledge are taught, and that after the student has received a general education at the university. It is very clear that the artillery schools and those of mining and of military science will continue; those schools only will be suppressed which, despite their pretense of giving a special, professional education, have ceased to be special, and, as has already been explained, have become imperfectly developed, bastard universities.

(2) *Suppression of state examinations.* — The Faculties should award only those degrees which, like the doctorate of foreign universities, are purely academic, and which will not give one the right to practice a profession. If the bestowal of state degrees is left to the Faculties, preparation for examination will inevitably become the chief business of students and professors. The programs of these examinations will determine the instruction given; science will be robbed of all liberty of effort and of guidance. If it is felt that the state is bound to attach conditions to the practice of certain professions — teaching, medicine, law, *etc.* — state examinations having those things in view will be held outside the Faculties. The system of state examinations, to which no one is admitted

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except those furnishing evidence of a certain period of residence in the universities, is in operation, as is well known, in Germany.

(3) *The union of the Faculties of each city into an autonomous university.* — Faculties which are well endowed, which have students, which are free to cultivate at their ease and according to their taste the vast field of knowledge, should be united and form a moral person, a corporation, a body animated with a truly individual life. "*Qui dit facultés dit les puissances d'une même âme.*" The university is the bar of metal formed by the close welding of the Faculties. At the same time the universities should enjoy a certain autonomy. Hitherto all the Faculties of France have obeyed the word of command issued from the bureau of the ministry of public instruction at Paris. Hereafter they should exist freely within the bosom of free universities, beyond the control of a representative of the state, which, nevertheless, should retain the right of inspecting them, because it provides for their support.

Not one of the three articles of this reasonable program has yet been carried into effect. Not one of the reforms here proposed could be at once realized without profoundly disturbing the prejudices and habits of the nation. No one as yet dares to proclaim himself openly an advocate of the first two; and the third, despite the great caution of its defenders and the warm support of the government, has been adjourned *sine die*, that is to say, pushed to one side by the Senate. Is this equivalent to saying that for fifteen years nothing has been done toward the accomplishment of the reform desired and predicted by all the best minds of France? Assuredly not. Consult the statistics. The scientific Faculties *par excellence*, the Faculties of Letters and of Science, had not a single student in 1869. To-day the Faculties of Science count 1900 regular students; those of Letters, 3400. The number of doctorates and licentiates annually conferred by these Faculties has quadrupled. Whence do these 5000 students come? What are they doing? What changes does their presence indicate? What is to-day the actual status

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of the question as to the future of the university corporations in France?

1. *Recent development of the Faculties.* — The Faculties, enriched and strengthened by the bounty of the state, have devoted themselves first to procuring a body of listeners different from that with which they were previously content. The beginnings, which date only from yesterday, were very modest. In 1877 the Paris Faculty of Letters began to matriculate students in letters, a new sort of students, no specimens of which had before existed. The number registered was six. Of these four had scholarships, and it seems that there was some difficulty in procuring these incumbents. We have preserved the paper on which they wrote their replies to the questions asked at the head of the column, for example to this: Does he accept the scholarship? It was as if a favor was asked of them. The partisans of the old system did not fail to smile at these students whose consent to attend lectures had to be purchased, and who yielded it even then with some ceremony. To-day the Paris Faculty of Letters alone has 1200 students instead of six. Of this number those who hold scholarships, *i.e.*, those whom the state pays for being students, amount to only a fiftieth of the whole number. The scholarships are no longer freely offered, but are awarded competitively, and are the object of the ambition of all gifted young men. The same is true, allowance being made for different conditions, in the provincial Faculties.

The Faculties have not forcibly wrested from other institutions the thousands of students who throng and invigorate them to-day. They have merely worked veins which before were neglected. Previous to 1877 no one who wished to become a teacher could hope for an appointment except through the Normal School, which received forty pupils annually. The Faculties admitted to their courses those who had not been able to enter the Normal School, those who had not wished to enter it — in a word, all who were candidates for their degrees. They were content with preparing students to pass the higher

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examinations, and announced that in future they would perform this work. Thus in a short time they gathered about them the youth who had been left without guidance and instruction. Fifteen years have passed, and already from the classes opened by the Paris Faculty to prepare students for its degrees, hundreds of professors have been graduated. The day is near when the majority of the professors in the *Lycées* of France will be men who have studied under the Faculties of Letters and Science — Faculties which not long ago were destitute of students. The Normal School has thus unexpectedly met, in its own field, with the sharpest competition.

The effect of this competition on the Normal School, it may be observed in passing, has been very remarkable. Its function was originally to train teachers for secondary schools, but that justification for its existence has disappeared, since the Faculties now train a larger number of such teachers and train them fully as well. No one has argued from this that the Normal School should be suppressed; but already, in order to justify its continued existence, some have declared that it should cease to be a mere training school, where candidates are prepared for professional examinations. "It should be a retreat where a select body shall be initiated into the enjoyment of the highest intellectual pleasures and the employment of good methods." According to one of his recent biographers, the late M. Fustel de Coulanges vehemently rejected the opinion of those who would confine the work of the school to the turning out every year of forty professors for the *Lycées*. He desired that it might be *a school of high, free and liberal studies*.

A school of high, free and liberal studies! The idea is worthy of all approval; but the Faculties are quite ready to follow the Normal School upon this new ground. If the awarding of degrees, joined with brilliant courses of public lectures, failed to satisfy their ambition in the past, the preparation for degrees, to which they have so successfully devoted themselves since 1877, fails to satisfy them now. They willingly undertook this work because it was useful and because it

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served to attract students; but they would be very sorry to be forced to keep it up indefinitely. The pursuit of science for its own sake is now their dearest desire. It could easily be shown that never, even in the critical period when they were trying to make for themselves a place, have the Faculties lost sight of their real object. As the years have passed, the exhortations of such leaders as M. Lavisse, who are in some sort their spokesmen, to free, original, disinterested work, have become more and more urgent; and the training work with which they began is giving place, more and more, to scientific work. In the first period of their evolution — the pedagogic period — the Faculties turned out professors by the legion. In the second phase of their development, which has been predicted from the outset, the domains of advanced science will be filled with workers who have obtained their training at the Sorbonne. In the present state of international science, every institution of higher instruction which fails to pass out of the first of these phases will condemn itself to death. Under the spur of competition the Normal School has come to understand this truth. The Faculties have recognized it, and have been guided by it for fifteen years.

A very simple reform, therefore, will suffice to give the Faculties of Letters and of Science an organization corresponding to that of the philosophical faculties of the German universities and to make them capable of performing the same services. They have now both students and resources. It only remains for them to direct their energy and that of their students to the cultivation of pure science. They are still too much absorbed in the work of preparing for examinations for the degrees of licentiate and *agrégé* — examinations poorly conceived and combined, artificial and scholastic. Let the programs of these examinations be changed, — and nothing is easier to effect than a change of program, — let the rules be so modified as to require for the coveted degrees of licentiate, *agrégé* and doctor a taste of the fruits of the tree of knowledge, and everybody will soon be tasting them. As soon as the licentiate can be obtained from the French Faculties in the same

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way as the degree of doctor of philosophy is obtained at the German universities there will be in France as many vigorous centers of higher instruction as there are Faculties. All that is needed to bring about so desirable a result is a modification of the programs for the licentiate and other examinations.

Let us suppose this change accomplished. There will then be no reason for the continued existence of the *École des Hautes Études*. It will either be merged with the Faculties, or it will be affiliated to them and will specialize in certain outlying domains of science which the Faculties themselves have not yet cultivated. Already, in fact, the mathematical, physical and chemical sections of the *École des Hautes Études* are attached to the Paris Faculty of Science. But how will it be with the Normal School? One of two things will happen: either it will become the school of high, free and liberal studies of which M. Fustel de Coulanges spoke — and then its situation will be just the same as that of the *École des Hautes Études*, a similar fate awaiting it sooner or later; or else it will become a school of pedagogics, a special school for the application of the pedagogical sciences to practice, which one will not enter till after he has passed through the Faculties.[1] Let it be noted that these results are really inevitable; that these simplifications, so desirable in themselves, are the necessary result of the evolution which is already in progress.

Finally, the state has (unintentionally) come to the aid of the Faculties, and secured for them a new and very considerable body of students. The military law of 1889 imposes three years of service in the barracks upon all young men who have not passed through a special school or received the degree of licentiate from a Faculty. Those who have fulfilled these conditions need serve under the flag only a single year. Such an exemption from two years of service must prove a very strong

[1] As to the *Collège de France*, Ferdinand Lot remarks: "As soon as the Faculties become what they ought to be, it will be impossible to find any reason for the separate existence of the *Collège de France*; it will be seen that its chairs should be transferred to the Sorbonne." — L'Enseignement Supérieur en France: ce qu'il est; ce qu'il devrait être (Paris, 1892), p. 64.

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attraction, and will assuredly bring to the Faculties a steady stream of recruits from the best elements in France.

2. *The establishment of universities.* — In comparison with the natural and spontaneous course of development of which I have spoken, — a development which must soon change the character of the instruction given in the faculties, — the reform concerning which a few words must now be said is of only secondary importance. The fact that this reform alone has been fortunate enough to attract public attention and to find an echo in the debates of parliament does not affect the truth of the statement I have just made.

The proposed reform has to do with the grouping of the regenerated Faculties into autonomous universities. The idea is sufficiently old; it goes back to a time when the Faculties had not yet emerged from the condition of nothingness into which the Napoleonic system had plunged them. The Waddington ministry, which fell May 16, 1877, had nearly perfected a bill for the establishment of provincial universities. After the overthrow of this ministry, its project was forgotten. It was reserved for M. Bourgeois, minister of public instruction in 1892, to bring it before the Senate and secure its discussion.

From 1877 to 1892, however, the way was prepared for the creation of universities, and that with a wisdom worthy of all praise, by men devoted to this reform. In 1885 M. Jules Ferry said, with much truth, that in such a matter the law follows rather than creates custom, and that it would be a mistake, perhaps irreparable in its consequences, to give legal form to a thing whose reality was still doubtful.

> Are the customs [he inquired], without which university life would be a fiction and an illusion, sufficiently established to call to-day for the sanction of law? As soon as the state shall establish universities, it will, so far as they are concerned, divest itself of a part of its powers. . . . Ought it to do this before a decisive experience has fully justified the step? And for the future universities themselves, can there be any better fortune, any surer pledge of their success, than to come in their own good time, summoned by the force of facts, instead of leaping suddenly into existence as the creatures of abstract law?

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In accordance with this view M. Jules Ferry, during his ministry, submitted to the consideration of all the Faculties of France a series of questions touching the establishment in France of universities analogous to those of other countries of Europe. The documents resulting from this inquiry have been printed in the sixteenth volume of the *Enquêtes relatives à l'Enseignement Supérieur.* The opinion of a great majority of the Faculties being favorable, a preliminary decree was published, December 28, 1885. This decree, issued by the government with the approval of the superior council of public instruction, did not create universities, — it would have needed a law to do that, and the moment was not deemed opportune for taking such a step, — but it established in each academic center a preliminary and organic grouping of Faculties. These bodies were brought nearer together; a relation of solidarity was established between them; they were again intrusted with the care of their general interests; they were called to a life beyond their own special sphere, a life common to all; and as the organ of this common life, above their special councils, they were given a general council, a kind of university senate, consisting almost wholly of elected members, the deans and representatives of each Faculty, and presided over by the rector as representative of the state and guardian of the law. In other words, the decree of 1885 united the separate Faculties of each city into a homogeneous and living whole, lacking only that which the Chambers alone could confer — the name and the civil status of a university. "In fact," as an eminent person said recently, "the French universities have existed since 1885, and when the law shall interpose, it will be, not to create, but to confirm and sanction." [1]

It appears then how methodically and with what consistency this whole movement has been conducted. There has been no undue haste. There has been no desire carelessly to bestow the great name of university upon a group of Faculties before they have made themselves worthy of the name. Upon them has been bestowed the organic liberty of a common life, and in

[1] Liard, L'Enseignement Supérieur en France, II, 417.

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1885 it was said to them : "Live, manage your own affairs ; if you do that well, the name of university will be your reward."

The experiment has continued for seven years, and it has succeeded beyond all expectation. The Faculties have become accustomed to living together ; their instructors and students have begun to know each other and to fraternize. In all the cities where Faculties exist there are to-day general associations of students, very prosperous and very useful; and with those at Paris the pupils of the special schools have begun to affiliate. These associations have invited the students of foreign universities to their *fêtes*, and delegations from the university corporations of England, Italy, Belgium, Switzerland have taken part in the celebrations recently held for the inauguration of the New Sorbonne, and on the occasion of the sixth centenary of the old University of Montpellier. The idea, the thought, the name of university, for so long a time obliterated in France, have won a remarkable popularity, especially in certain provincial cities — Lyons, Bordeaux, Toulouse, Nancy, Montpellier. "In Lyons, for example, in the press, in society and even among the working people, they speak off-hand of the University of Lyons ; they have faith in its future and in its services."[1] In the New Sorbonne, beneath the beautiful fresco by Puvis de Chavannes, in that magnificent *aula* which may well be an object of envy to all the universities of Europe, may be read, and not in anticipation of the reality, these words, written in letters of gold: *Université de Paris.*

It was under these very favorable conditions, and after the long and prudent work of preparation which I have outlined, that a bill for the establishment of universities in France was submitted to the Chambers at the beginning of the year 1892. It was approved by the majority of a committee of the Senate, which included five or six former ministers of public instruction ; it came up for debate in the month of March ; and it met with the coolest reception. So disagreeable and unexpected a result requires explanation.

[1] See L. Legrand, Les Universités Françaises et l'Opinion (Paris, 1893).

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The project came to grief because of a combination of different sorts of opposition, which it is very instructive to enumerate and to distinguish.

(*a*) In all political assemblies of France, even to-day, there exists a party, numerically small but cherishing with great obstinacy its regrets for the past — the Conservative or Reactionary party. Strongly attached to the interests of the Catholic Church, this party is hostile *a priori* to every measure that tends to strengthen secular or state instruction at the expense of "free instruction" — that is to say, at the expense of the "Catholic Universities" which have lately been established by private initiative in some of the cities of France. By character and tradition the Reactionary party was bound to view with disfavor a bill which would strengthen the position of the state Faculties.

(*b*) Very numerous — much more numerous than the Catholics — in the French assemblies, are the Jacobins, that is to say, the men who are attached to the system of excessive centralization which was established by the Revolution and continued by the Empire. The public law of the Revolution and of the Empire assumes that there is no place in the modern state for special, permanent and self-governing bodies, deriving their income from property held in mortmain and discharging services of a public nature, — especially if their service be the giving of instruction; for the state has taken to itself the monopoly of instruction. The sole and comprehensive "University of France" created by Napoleon excluded free, local universities. To found such universities, the Jacobins think, is to destroy the unity of the University of France — of this public corporation made in the image of the nation, one and indivisible, and designed to uphold national unity by a common system of education, inspired by a uniform spirit.

If the Jacobins, priests of the religion of centralization, would discuss the question, it might be demonstrated to them that the rights of the state would not be imperiled by the founding of local universities. It might be shown that such universities would not be states within the state, but merely organs of the state, endowed with all necessary independence

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for the discharge of the highest moral functions of the state. French unity would not be compromised by permitting local universities to develop special features in the various provinces. But the Jacobins would not be convinced by these arguments, and their hostility to the plan of M. Bourgeois was as certain from the outset as that of the reactionists.

(*c*) It was also very probable that the plan would be regarded with disfavor by the members of Parliament who were attached to the special schools, either as members of the teaching force or as "old graduates." The establishment of real universities, to speak frankly, implies the disappearance, after a brief period, of special schools other than those of a technical character. The bill also contemplated "the union with the future universities of great establishments for higher instruction which till now have enjoyed an independent existence." "What are the institutions which you covet?" exclaimed M. de Rozière to the Senate, March 14, 1892. "You have not said, and this silence produces among all a uniform and legitimate feeling of anxiety. . . . Have you foreseen that they will oppose the incorporation by which they are menaced with the resistance of despair?"

This opposition is very dangerous, because of the firmly established reputation of the special schools among the *bourgeoisie*, who, until 1880, were not accustomed to hear any other institutions mentioned. Twenty years more must pass before a generation will arrive at the age of manhood which has tested for itself the superiority of the system of free, scientific, university education over that of the closed schools. The leading opponents, in the Senate, of the plan which has been so long and so tenderly cherished by the Faculties of France, were MM. Challemel-Lacour and de Rozière. One of them spoke in the name of the *Collège de France* and the *École des Chartes*, the other in behalf of the Normal School. Every one understands the grounds of their opposition. It is the anxiety of these three institutions and of their former students, that has postponed till the Greek calends the solution of a problem which we believed was almost solved.

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(*d*) I may add here that the government made a serious tactical mistake. It could count on some devoted supporters; besides those whom its arguments convinced, it was sure of the vote and the support of the representatives of the cities which were designated as the seats of the future universities. But in a light-hearted way, and by reason of a theoretic scruple — a scruple of questionable justice but of unquestionable inexpediency — it alienated a part of this vote.

There exist in France fifteen groups of Faculties. If the government had proposed to create fifteen universities, the bill, thanks to the vanity of the local members, would have been assured of a majority. But, on the contrary, the government was careful to proclaim the fact that "all the groups of Faculties could not pretend to the honor of becoming universities." By this course it lost the support of the representatives of the weaker groups.

The motives which actuated the authors of the bill were certainly very exalted. They feared a waste of educational force. It is nothing to create Faculties, said V. Cousin; what is necessary is to make them great and strong. To scatter them is to destroy them. This is undoubtedly a sound principle. What a nation needs is a small number of great centers of learning. By multiplying them you lower the character of the instruction and diminish the number of the students. There are, it is true, twenty-one universities in Germany;[1] but for many reasons France cannot undertake to establish a number proportionally as great, if the French universities are to be really viable. A half-dozen will suffice. As is well said by M. Liard:

> If they are to survive, the universities of France should not be formed by the sudden and general transformation of all the groups of Faculties: universities should be established only at those places where from the Faculties themselves teaching bodies can be formed worthy of this name and of the advantages which it carries with it.

This conclusion is very just. From the principle here laid down, however, we must logically infer, not only that the

[1] [One-third of which, in our opinion, might be suppressed with advantage. — EDS.]

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weaker groups of Faculties should be refused the name of universities, but that they should be suppressed; and such a proposition would be theoretically justifiable. In order to insure the healthy growth of the main branches of a tree, do we not cut off the smaller branches which absorb sap and life without gain to the whole? Cropping of off-shoots is a process recommended in arboriculture.

The authors of the plan had drawn this inference. At heart they desired the death of the "little" Faculties for the well-being of the "great" ones; but they did not dare openly to demand the suppression of any Faculties, because they were sure that they would arouse the furious hostility of the centers where the suppressions must occur. They did not perceive, however, — and in this lies their shortsightedness, — that this hostility would be scarcely less, if, instead of death pure and simple, they offered to the "little" Faculties conditions of a miserable, humiliating and commonplace life. This has actually been the result of the attitude they assumed. On the one side the deputies of the cities where the "little" Faculties are located, have violently opposed the bill; on the other side its friends have been embarrassed by the effort to defend an unnatural combination. They have been obliged throughout to affirm their solicitude for the "inferior" Faculties which, had they been able, they would gladly have destroyed.

To recapitulate: the discontented, the Catholics, the Jacobins, the friends of the special schools, the champions of the "little" Faculties — all united against the bill. The last named held the balance of power. It would have cost little to satisfy them. They desired the establishment of fifteen universities, of which only six or seven — Paris, Bordeaux, Lyons, Toulouse, Montpellier, Lille, Nancy — would have been really strong universities. The others would have vegetated; but would that have been a serious calamity? They might possibly have grown stronger in time; if not, they would ultimately have withered and disappeared.

The present status of the question of universities in France may be summed up as follows: Universities are in process of

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growth ; the name is still denied them ;[1] but they are developing slowly and irresistibly, like the spontaneous creations of nature. They will have their day, and the consequences of their advent over the ruins of the special schools are difficult to forecast ; but it is certain that the consequences will be important. The France which the world has known for a century is the France which was cast in the iron mould of the Napoleonic system — a system which banished liberty, free thought and science. Should the emancipated youth of France be soon admitted, as everything indicates that they will be, to the enjoyment of the high intellectual culture which has been the source of the power of Germany, it will avail more than a battle won for the restoration of our country to its rank among the nations.

PARIS, FRANCE. CH. V. LANGLOIS.

[1] Since this article was written, a minister of public instruction, M. Charles Dupuy, has secured the insertion in the *loi de finances* of the following section: "The body formed by the union of several State Faculties in any single city is invested with civil personality" — *i.e.*, enjoys the rights of a corporation. Each Faculty has possessed these rights since 1885 ; now, since 1893, each body of united Faculties, represented by an elected council, has the power of receiving and managing property. "If among these bodies," says M. Liard, "there are true universities, time will distinguish them from the rest, reveal their character and secure for them their proper name."

As a result of this measure, the question of establishing universities in France has slumbered for a year. France now has universities, which lack only the legal right so to style themselves. The reform movement is at present centered on the vital problem of changing the system of examinations — of freeing masters and students from the old programs which still impede scientific education and production in our Faculties (*cf.* above, pp. 529–530). Scientific freedom, *Lehr- und Lernfreiheit*, — a matter far more important, indeed, than the name of university, — this is what the French Faculties, we hope, are on the point of deserving and obtaining.

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REVIEWS.

Orations and Addresses of George William Curtis. Edited by CHARLES ELIOT NORTON. New York, Harper & Brothers, 1894. — 3 vols., 8vo.

In these three comely volumes we have a fitting memorial of a man whose life was spent in the fulfillment of a conception of civic duty which he expressed, in the first oration printed in this collection, in these words: "The American scholar, gentlemen, has duties to politics in general; and he has, consequently, duties in every political crisis in his country." Mr. Curtis spoke thus in 1856. He lived for more than a generation afterwards, and in all that period, through all the vicissitudes of his active public career, he never swerved from the straight path of duty as he saw it, either in ordinary times or in those crises in his country's history in which he was called to play an important part.

It was the happy fortune of George William Curtis to combine, to an extent rarely witnessed, the delicate artistic instinct of the man of letters with a marked capacity for public affairs. He was in no sense what is known as a practical politician. He was the open and avowed enemy of the kind of politics that has to do with the management of caucuses, the manipulation of conventions and the corruption of electors. His ideal of political action was that which found its illustration in the old New England town-meeting, which, as he himself described it, "brought together the rich and the poor, the good and the bad, and gave character, eloquence and natural leadership full and free play." This conception he carried with him into the larger sphere of national politics, where, by force of his character, of his eloquence and his qualities of leadership, he became identified with those great movements of thought and feeling which, in times of public consciousness, when the people act for themselves, determine the course of history and the fate of nations.

One of the most dangerous of all gifts is that of eloquence — the power to excite the emotions, to sway the judgments of men, and thus to shape their course. Such a power, if devoted to base aims or the promotion of selfish ends, is both dangerous and injurious.

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If Mr. Curtis was influenced in his conduct by a consciousness of this fact, he gave no ground for the reproach that he used his gifts in order to attain unworthy objects. His patriotism was unselfish. He set a high standard for himself, and for his country also. He did not subscribe to the unscrupulous doctrine that dishonesty may become a virtue when practiced in the name of patriotism. "Right and wrong," he exclaimed, in his oration on Patriotism —

> right and wrong, justice and crime, exist independently of our country. A public wrong is not a private right for any citizen. The citizen is a man bound to know and to do the right, and the nation is but an aggregation of citizens. If a man shout: "My country, by whatever means extended and bounded; my country, right or wrong," he merely utters words such as those might be of the thief who steals in the street, or of the trader who swears falsely at the custom-house, both of them chuckling: "My fortune, however acquired."

There is scarcely a page in these volumes in which may not be found some fair and wholesome truth expressed in that elegance of phrase which Mr. Curtis knew how to use without detracting from the force of his thought. His addresses and orations are not mere oratory. He did not speak for admiration and applause. He was the master, not the victim, of his eloquence, and he spoke to persuade and convince. Thus, while he appealed to the emotions, he always sought to arouse those sturdy and manly sentiments of right and duty which are the source of all public virtue. He believed in liberty, and he believed in law. "Liberty under the law" is the phrase he employed to express this sentiment in a speech made at the dinner of the New England Society of the City of New York, in December, 1876, in the midst of the controversy touching the contested presidential election of that year. Fortunately, the dispute was decided in accordance with the policy he advocated, without recourse to arms. But his words are as true now as they were then, and we may well recall his declaration that "the will of the people alone is but a gale smiting a rudderless and sailless ship, and hurling it, a mass of wreck, upon the rocks"; but "the will of the people, subject to law, is the same gale filling the trim canvas of a ship that minds the helm, bearing it over yawning and awful abysses of ocean safely to port."

It is because Mr. Curtis was something more than a mere orator, something more than a mere man of letters, something more than an expert in the use of words and phrases, that it is difficult to consider the contents of the volumes before us simply as a literary

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product, however finished they may be in that regard. The man and what he said are so completely identified, that we should seem to lose something in attempting to separate the one from the other. In the delicately-wrought sentences we feel the power of the speaker, his courage, his honesty, his firm moral purpose; and the subjects of the addresses and orations are in the main such as naturally evoked the expression of his sentiments and views in relation to public questions. The first volume contains orations and addresses on the principles and character of American institutions, and the duties of American citizens; the second, addresses and reports on the reform of the civil service of the United States; the third, historical and memorial addresses, the last of which is the address on James Russell Lowell.

The editor has exercised a wise judgment in devoting a volume to Mr. Curtis's addresses and reports on the reform of the civil service. For more than twenty years he freely gave to the advancement of this cause his maturest powers; and when we add to the evidences of his activity here presented his contributions to the editorial columns of *Harper's Weekly*, we may be able to appreciate the intensity and constancy of his zeal. Mr. Curtis believed the reform of the civil service to be a matter of vital importance. Not only did he hold the system of selecting persons for official positions on the ground of unscrupulous party service to be "the most wasteful, the most awkward, the most destructive, possible," but he believed that it menaced the public safety. "It fosters," he declared, "personal and official corruption, it paralyzes legislative honor and vigilance, it poisons the spring of moral action, and so, vitiating the very character of the people, it endangers the permanence of the nation."

Though Mr. Curtis, in advocating the reform of the civil service, necessarily exposed himself to the charge, always made against men of his type, of being unpractical and visionary, we find in his speeches and writings abundant proofs of good temper, tact and sound judgment. It was not his mission to hold public office, but to form public opinion, and it is with reference to this object that his efforts are to be estimated. In one of his addresses he quotes the words of Lincoln, that "he who moulds public sentiment goes deeper than he who enacts statutes or pronounces decisions," since he "makes statutes and decisions possible or impossible to be executed." There is a remarkable absence in Mr. Curtis's utterances of that harshness which not infrequently characterizes the expressions of men who

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devote themselves with great intensity of feeling to the advocacy of a cause. While he made no compromises with what he believed to be wrong, he did not demand the doing of that which was impossible, and, if he did not hesitate to point out shortcomings, he gave ample credit for all that was well done. In this way he doubtless both won and retained much support which severity or impatience would have repelled or alienated; and he demonstrated by his moderation, his good temper and his forbearance, as well as by his courage, eloquence and lofty determination, his capacity as a leader of public opinion.

Mention has already been made of the address on James Russell Lowell, in the volume of historical and memorial addresses. In the same volume may be found the oration delivered by Mr. Curtis at Concord, Massachusetts, on April 19, 1876, at the centennial celebration of the Concord fight, the beginning of the Revolutionary War. It was a memorable celebration, and the oration was worthy of the occasion. To quote its notable passages would be almost to reproduce it, and space does not admit of such an anthology. But I may venture to say that it ought to be read by every American, and to have a place in every American library, together with the other eloquent and patriotic utterances collected in the volumes before us.

JOHN BASSETT MOORE.

Staatenbund und Bundesstaat. Untersuchungen über die Praxis und das Recht der Modernen Bünde. Von Dr. J. B. WESTERKAMP, Professor der Rechte an der Universität Marburg. Leipzig, F. A. Brockhaus, 1892. — xx, 549 pp.

One of the principal desiderata for the science of comparative constitutional law is an adequate work on federal government. Freeman's book is only a fragment; Jellinek and von Brie have written about the juridical principles underlying federation, rather than on the workings of federal government. We have still been in need of three distinct pieces of hard work: first, an adequate account of the different federal governments which have existed, with the chain of connection between them; second, a statement of the practice of federal government in all times, carefully analyzed, and each point enriched by practical suggestions; third, a discussion of the nature of mixed governments, as shown by their actual history and practice. In the volume before us Professor Westerkamp has essayed all three of these difficult tasks. His book is, therefore, original in plan and deserves careful consideration.

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The first part of the work, the "*Praxis*," is essentially a history of the origin of the more important federal constitutions, together with abstracts of some of them, a few formal comparisons of one with another, and, in a few instances, enumerations of defects. Neither the space, the plan of the author, nor his preparation is sufficient to make this a valuable contribution to the subject. His proportions allow little more than a hundred pages; he prefers to leave out of account all ancient and mediaeval federations, even the Hansa; and he candidly admits his lack of thorough acquaintance with the Latin-American federations. Perhaps for this very reason the Latin-Americans get more than their due space. While it is undoubtedly convenient to have these sketches in one work, they are not in themselves so valuable as the usual introductions to the treatises on the constitutional law of the countries mentioned; and there is no thread of continuity sufficient to make them a living history of a great system of government. The best sections are upon the Netherlands and Germany, and here one would prefer the author's more elaborate works on the same countries. Nor is the bibliographical apparatus such as would make the book a convenient guide to the literature.

Upon the second part, "*Recht*," must rest Professor Westerkamp's reputation as a contributor to federal constitutional law. He has arranged his matter in a comparative statement of the constitutional systems of the four great federations, Canada, Germany, Switzerland and the United States, with much briefer treatment of extinct federations, and of Mexico and the Argentine Republic. This side of the subject has been much less studied than the historical side; the mass of details has never before been sifted and coördinated; and the author has taken the unusual pains to study the Netherlands, Switzerland and the United States by residing in them.

The style is good, the thought more pellucid than is usual in German works, the diligence, candor and thoughtfulness of the author appear on every page. In such a selection from a great body of material one expects a knowledge of the best authors, and a keen judgment; but one looks in vain for evidence that the author is well grounded in the literature, at least of the western hemisphere. He does not mention Cooley's Constitutional Law, or Cooley's Story, or Pomeroy; he has apparently no knowledge of Bourinot's books on Canada, or of Houston's collection of documents. He has carefully worked over the texts of the constitutions, and often the formative laws; and he recognizes that practice is the only guide

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as to the real meaning of the fundamental statutes; but he gives very little illustration of practice. His note on German colonization (page 212) is an interesting example of what ought to appear on every page.

Nevertheless, the material is interesting, so far as it goes, and the author has shown great skill of analysis in his classification. The main categories are: the attributes of federal government, including the division of powers between the nation and the commonwealth; the organs of government; the distribution of powers between the departments; the method of amendment; and the powers of enforcement. Repetition is, of course, unavoidable, but perhaps it might be reduced by making the attributes of government the main stem. It is certainly more important to know what is done and how it is done, than to know who does it. Perhaps the most helpful part of the work is the clear sub-division of the main heads, and the accurate distinctions drawn. The discussion of "*Hauptbefugnisse*" and "*Hülfsbefugnisse*" in the system of the United States (page 141) is an excellent commentary on the doctrine of implied powers.

Unfortunately this necessary classification has an unnecessary and confusing sub-classification: under each of his four general heads the author takes up every one of his federal countries, each already separately considered in the historical part. This is the great disappointment in the book: we have still to wait for a comparative account of federal government, in which the experience of all federal governments shall be summed up and stated point by point, so that in one paragraph we may find the practice of all federations as to the choice of the executive, or the method of taking a vote in the lower house, or the levying of import duties, or any other function of government.

The third part of Professor Westerkamp's work, the theory of federal government, is limited to a long note on sovereignty (pages 100–110), which is introduced *apropos* of nothing in particular, and two brief essays on the distinction between *Staatenbund* and *Bundesstaat*. Notwithstanding his sturdy drubbing of the "*Souveranitätsschwindel*" of indivisible sovereignty, there will still be those who hold that in government as in physics there can be no conflict of invincible and irresistible. The discussion of the *Staatenbund* is the best thing in the book, and brings the whole question down to the common-sense basis of practice.

In details, the book is unusually accurate; the bit of *errata* noted in going through it is not sufficiently important to set down here.

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The author has undertaken a very difficult task with an honest and intelligent purpose, and the success with which he has developed his few generalizations shows that he ought to work out the same material on broader lines, with more reference to the unwritten effect of custom.

ALBERT BUSHNELL HART.

HARVARD UNIVERSITY.

Sources of the Constitution of the United States, considered in relation to Colonial and English History. By C. ELLIS STEVENS, LL.D., D.C.L. New York, Macmillan & Co., 1894. — xii, 277 pp.

In a study of administrative continuities, Mr. Stevens has succeeded in grouping, in a useful and interesting form, many facts and deductions in connection with the historic evolution, from the early periods of English civilization to the present day, of racial instincts of self-government, and of all that in those may be involved. Compressing into a single volume an outline of the important growths of centuries, he has attempted a difficult task; but the suggestion in one work of the wide range of allied topics upon which already much has been written, is in itself a satisfactory achievement. As an introduction to further and extended reading on the many subjects involved, the work may well be of service to students of the origins of modern governments.

The author holds at the outset that a safer theory of political growth than the social contract theory is that which portrays government as a "result of natural social growth." Attention is to be concentrated, then, on "the essential and continuous potency of racial institutions in the life of nations." Since "nationality creates characteristic traits of thought and tendency," and the United States "was founded by men, the great majority of whom were of the English branch of the Teutonic race," Mr. Stevens seeks to show in the constitution of the United States the influence of the theories and practices of Englishmen for centuries precedent to the promulgation of that document. By a due adherence to the well-established sequences of the administrative forms and political theories of the people in question, and by a high degree of care and thoroughness in the discussion, he has been successful in his effort.

At the epoch of the first colonial establishments on this continent by England, four prominent phases of thought on forms of govern-

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ment are indicated respectively by the single executive, the bicameral legislature, the distinct judiciary, and by a group of such individual rights as trial by jury, security of person and of property, and the dependence of taxation upon representation. These ideas were rudely reproduced in each of several colonial charters, whether mainly of commerce or of administration, and, when thus transplanted, remained the chief features of colonial government. The conservative revolution which made the colonies states preserved these principles and forms, already somewhat influenced by local tendencies, and they served as a basis of action in the formation of the constitution of 1787. A further basis was found in the transatlantic writings of the time, and in the contemporary English constitution, that inconstant quantity, which, lacking the definiteness of the days of George I, or of Victoria, distinctly reflected the personality and purposes of George III. The American constitution, then, embodied theories as old as *Magna Charta*, developments of Teutonic society for fourteen hundred years, and of colonial experience and practice for parts of two centuries, and certain features of the particular relations of Parliament and royalty between 1760 and 1787. But, the author says,

> the American constitution, though reflecting a contemporaneous stage, was not a mere imitation of the constitution of the mother-land, but an historical development from it. Its similarity to its prototype resulted not from any copying process first undertaken in the convention at Philadelphia. Rather was it a reaffirmation of principles already American by hereditary usage or long-established custom.

Devoting two introductory chapters to slight summaries of the chief features of the charters with which the colonies were incorporated, and to the transition of many of those features, in essence at least, from colonial charters to the federal constitution, the author presents a brief but fairly thorough review of the development of the legislative body and its powers, of the executive, of the judiciary, and of the bill of rights. The lines of this review are the lines made familiar by Freeman and Stubbs, and already followed in an elaborate way by Hannis Taylor. Tacitus and "the forests of Germany" constitute respectively the literary and the geographical starting-points of the survey.

Mr. Stevens's volume serves to reflect the interest aroused by the late Douglas Campbell's work, and while the two authors respectively represent the claims of English and of Dutch influence on our

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institutions, the conflict is not necessarily great, as Mr. Stevens aims to show a clear English influence only in specific lines, and is limited by the scope of his work from entering into a discussion of other lines of racial influence, in the details of some of which the supporters of the Dutch claims have found much satisfaction. Although written before the publication of *The Puritan in Holland, England and America*, the present work has been supplemented by copious foot-notes which in many cases present an apparently conclusive refutation of Mr. Campbell's arguments. In all discussions upon such uncertain quantities as collective instinct, results are often as unsatisfactory as opinions are positive; and it is well that this new volume has such an aim as to render necessary no great unburdening of personal opinion, but only such expressions and effort as tend to constitute a clearly stated exposition of evolutions in the history of government.

COLUMBIA COLLEGE. HARRY A. CUSHING.

Commentaries on the Law of Public Corporations. By CHARLES FISK BEACH, Jr. Indianapolis, Bowen-Merrill Co., 1893. — Two volumes, cclxiii, xxiv, 1692 pp.

A Treatise on the Negligence of Municipal Corporations. By DWIGHT ARVEN JONES. New York, Baker Voorhis & Co., 1892. — lxviii, 588 pp.

The law relative to municipal corporations has been very successfully treated in the work of Judge Dillon, which work has probably attained a greater, and justly a greater, popularity than any other legal treatise which has been placed before the public by an American writer. Any one, then, who attempts to treat of this subject at the present time, has before him a high standard of excellence. Moreover, Judge Dillon has found time, notwithstanding his large practice, to keep his work up to date by the issue of successive new editions. An attempt by any other author to treat the same subject must find justification either in the assumption of a somewhat different point of view, or in an endeavor to compare the law of municipal corporations proper with that of *quasi* municipal corporations, or in an especially full elaboration of some particular branches of the law whose principles cannot yet be regarded as firmly settled.

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It is the second of these ends which Mr. Beach seems to have had in view. His work on the law of public corporations he himself regards as an attempt, in connection with his former work on the *Law of Private Corporations*, to give to the reader a complete commentary on "company law." The present work, therefore, embraces a somewhat larger field than that which Judge Dillon attempted to cover. It covers the entire field of the law of public corporations. Indeed, its particular excellence must be found in this fact. Yet the attempt to treat at the same time of two portions of the law which have so many differences in minor details as the law of municipal corporations proper and that of *quasi* municipal corporations, is apt to lead to a certain amount of confusion. This confusion is not altogether avoided by Mr. Beach. He does not in all cases lay sufficient emphasis upon the differences between the two bodies of law. At the same time, when we consider the high standard by which Mr. Beach's work is to be judged, it must be confessed that he has acquitted himself creditably of his task. The law is stated in general with accuracy, and the newer decisions upon the subject are all collected and set forth. If any fault in the work is particularly prominent, it is the failure to adopt an altogether scientific classification. Thus we find that the same subject is often treated in different parts of the work, — a fault which, while it does not perhaps detract so much from the value of the work in the hands of the practicing lawyer, who may pursue a topic by means of the index, does certainly detract considerably from its value to one who desires to study the law of municipal corporations or of public corporations as a whole.

Mr. Beach has, however, in some parts, especially in the second volume, adopted an excellent classification, — a classification which we do not find in the ordinary legal treatise. Thus, he has attempted to take up in special chapters the different branches of administration which are attended to by municipal and public corporations and has practically produced the most nearly complete treatise that we have on American administrative law. Thus, we find chapters on the "Administration of Charities and Correction," the "Administration of Public Health," the "Administration of Schools," the "Administration of Police," and on the "Administration of Justice," so far as that is a part of the work of municipalities. Also, we find chapters on "Water and Light," and naturally on "Taxation and Local Assessments."

One feature of Mr. Beach's work that is common to almost all

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American legal treatises, is the lack of any adequate historical treatment of the subject. While the practicing lawyer has no need, as a general thing, to delve into historical documents in order to be able properly to try a case which he may have before him, still it is positively necessary for the intelligent study of municipal legal questions, that they be considered in the light of their history. No one can understand the present position of the American municipal corporation before the law unless he has made a study of the original legal position of the English municipal corporation. The relation of the present American municipal corporation to the state legislature, which is becoming a most important political question, can be comprehended only by knowing that the original English municipal corporation was not an organization for the purposes of general government, but was merely a corporation for the satisfaction of local needs. None of the cases that come up with regard to the control of the legislature over municipal corporations can be decided satisfactorily, save through an understanding of this principle. With the development of the more public side of the municipal corporation, as an agent of central government, the necessity of some central control over it has become apparent. But it should always be borne in mind that the municipal corporation was originally more an organ for the satisfaction of purely local needs, as it is at the present time in England. The ignoring of this fact by the legislatures of the country, and the lack of a proper historical study of municipal corporations on the part of legal writers, have resulted in the claim of the legislatures at the present time, in which they find large support from the courts, to control all matters with regard to municipal government, whether these matters be of local or of general concern. This lack of proper historical study of the subject has the further disadvantage of making most of the treatises on the law of municipal corporations which have been written by lawyers of much less value to the student of municipal government than they otherwise would be. For these works are practically limited in their scope to those matters wherein the rights of individuals are concerned — naturally the matters in which there is the greatest litigation. It is to be hoped that some writer on the law of municipal corporations will be found who will unite the qualifications of the lawyer with those of the political scientist, so far, at any rate, as municipal government is a part of political science.

While Mr. Beach has attempted to treat the law not only of municipal but of all public corporations, Mr. Jones, in his work on the

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Negligence of Municipal Corporations, has confined himself, as the title of his book implies, to one of the details in the law of municipal corporations proper. His work, however, is not on that account unimportant, for there has been no subject in the law of municipal corporations which has given rise to more conflict in the American decisions than this same subject of their negligence. Here again the twofold position of municipal corporations — as organizations for the satisfaction of local needs and as agents of the central government for carrying on those branches of administration that affect the state as a whole — has been of immense influence and importance. Mr. Jones recognizes this fact and lays great emphasis on it in his classification of the subject. He not only classifies the duties of municipal corporations, in connection with which negligence may cause damage to individuals, as public duties on the one hand, and private duties on the other; but he has adopted a third head in his classification, namely, "municipal duties relating to governmental affairs," under which he includes the matter of neglect for highways and kindred matters. While no one will claim that this is an altogether satisfactory classification from the standpoint of pure scientific theory, it must be admitted that in the present state of the law in the United States as to the liability of municipal corporations for neglect of their duties relative to highways and the like, no classification could be adopted which could be more satisfactory. For the rule of law with regard to the liability of these bodies in this respect must be regarded as an exception to the generally accepted rules as to their non-liability for purely governmental matters. Neither the legislatures nor the courts recognize that streets or highways are, in any sense, local in character in any other branch of the law.

Mr. Jones has put the legal profession under a great obligation for the satisfactory manner in which he treats this most vexed subject of municipal negligence. Besides presenting an acute analysis of the law of negligence in general, and an interesting historical description of its application to municipal corporations, he has made a distinct contribution to legal science in pointing out that in the later decisions upon the subject of negligence the courts are departing from the great canon of distinction between public, or governmental, and local, or municipal, duties so far as municipal corporations are the owners or managers of property. He shows that in the latest decisions, even if such property is used for governmental or public purposes, the municipal corporation to which it belongs is being held

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more strictly to responsibility for negligence in its care and management. This is undoubtedly one of the directions in which we may expect to see great development in the future; for nothing can shock one's sense of justice more than the decisions which, up to the present time, have been so common, holding that, simply because a piece of property, owned by a municipal corporation and negligently managed by it to the damage of an individual, is used for purposes of general rather than of local government, therefore, the municipal corporation which is guilty of the negligence shall be exempted from all liability to the individual for the damages which it has caused.

Mr. Jones also has much to say with regard to the rule which exempts municipal corporations from liability for negligence in the performance of acts which are *ultra vires*. He considers, as most people consider, that such a rule is unjust, and is indeed nothing but an application of the old idea, which has long since been discarded, that corporations could not be held liable for torts, inasmuch as they in no circumstances are authorized to commit torts and that therefore, the act of the agent by whom the tort was committed is not the act of the corporation. Mr. Jones lays great stress upon a case in the United States Supreme Court, *viz.*, Salt Lake City *vs.* Hollister (118 U. S., 256). In this case the city was held responsible for the payment of internal revenue taxes incurred by carrying on the business of distilling spirits, although the prosecution of the business was wholly *ultra vires*. In Mr. Jones's opinion the basis of this decision was the broad ground that corporations could not escape from liability for wrongful acts by showing that these acts were *ultra vires*, and he believes that Justice Miller, who rendered the opinion in the case, meant to give a deliberate expression of the view of the court upon the general question of *ultra vires*. It is to be hoped with Mr. Jones, that the decision to which he refers may be given a wider application in the future than it has yet received.

Mr. Jones's style is excellent, and the whole arrangement of the work is so clear that it is a positive pleasure to read it. Higher praise could hardly be given to any legal treatise; for in general such works consist so much of citations from decisions that to any but a lawyer who is endeavoring to write a brief, the perusal of them is altogether wearisome.

F. J. GOODNOW.

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Tratado de Derecho Politico. Por ADOLFO POSADA, Profesor en la Universidad de Oviedo. Tomo Primero: *Teoria del Estado.* Madrid, Libreria de Victoriano Suarez, 1893. — 426 pp.

This volume is a welcome contribution to political science. What Bluntschli has done for German, and Burgess and Woolsey for English-American, Posada has begun for Spanish political philosophy. Posada has been a close student of Bluntschli, Spencer, Ihering, Giner and Burgess, following in the main the method of Bluntschli's *Theory of the State.* While he is indebted to Spencer in the department of sociology, he combats the Englishman's individualistic conceptions. A special feature of the work is the steady use the author makes of the historical method, and his copious references to the literature of the subject. The bibliographical appendix renders the work most valuable as a book of reference to the original authorities, both on the general subject and on the special topics of the various chapters.

The present work is intended to be the first part of a comprehensive treatise on political science and public law. The title, *Derecho Politico*, of which the nearest English equivalent is "political law," is used to include both the theory of the state, treated in the present volume, and constitutional law, the prospective title of volume second. The concept of the state, its origin and its nature, the author holds, must first be considered, because it is only by a study of these in the light of modern sociology that we can reach the social character of the state in its juridical aspect. In the second part he proposes to complete the consideration of public law by a comparative study of constitutional law and the philosophical theories involved in the constitutions of the principal states of Europe and America.

Posada's exposition of the ultimate nature of the state exhibits the modern historical and sociological spirit. He gives full weight to the results of recent investigations into the characteristics of primitive society, as well as to developments of political history among the civilized peoples of the earth. The evolution of political society is not identical, he holds, though it is parallel, with that of the family. One is as necessary and inevitable as the other, though each is the outcome of a distinct necessity of human life. As one is related to the facts of sexual union and blood relationship, the other rests on social union and common needs and desires. But while political society is an outcome of inherent qualities of man as a material being, the state cannot be conceived as a mere mechanical or physio-

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logical result of natural agencies; nor, on the other hand, must it be conceived as a pure product of the human will. It is a sociological product of both physical nature and human volition. It answers to an external as well as to an internal necessity; for it is impossible to conceive a state apart from a basis in physical nature, and this implies geographic adaptation. This adaptation, which defines the social groups, according to Burgess, in "geographic and ethnic unities," limits the completer historical manifestation of the state. It conditions the state's action in the sphere of law. The nation, therefore, considered as an expression of these unities, cannot be regarded as necessarily the final manifestation of the state.

The federal state is considered by the author to be the most perfect of the forms of union through which the evolution of political society proceeds. The underlying principle of such a state is not the compact out of which the union takes form, but the existence of a historically-developed people prior to the pact. Where the compact is the primary source of the union, there is a confederation of states, not a federal state. The latter, to use Brunialti's classification, represents a juridical-organic, the former only a historical-political union. The juridical-organic conception is essential to the state in its fullest definition.

In defining the end of the state Posada makes clear the distinction between state and government. The end of the state is the realization of justice. In pursuance of this end, it is the function of the state to determine by law the juridical relations which shall exist between employer and employee, or between state and municipality, or in the sphere of public morality and education. The scope of state activity is made by the author rather wide, though subject always to the limitations of justice.

But it is not to the government that is ascribed the manifestation of all the power that is inherent in the state. Posada sees in the governmental organization but one element of the many through which the state is revealed. His treatment of the function of public opinion in the evolution and action of the state is abreast of the best modern thought on the subject, and there is sound and suggestive political science in his contention that the electoral franchise, far from containing the essence of political power, is but one mode, and not necessarily the most perfect or the most effective, of condensing public opinion. It is easy enough, when attention is called to the matter, to recall any number of instances in which the social force has been concentrated and given direction by the government

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or the press or by other means, long before the lagging electoral machinery has expressed the feeling of that part of the state which has the right to vote.

In his discussion of the modern state forms Posada adopts the now common classification of republics and monarchies, subdivided into the parliamentary and the presidential types. His work is a valuable evidence of the spread of sound ideas in political science.

COLUMBIA COLLEGE. J. M. LITTLEJOHN.

The Development of the Athenian Constitution. By GEORGE WILLIS BOTSFORD, Ph.D. Cornell Studies in Classical Philology, No. IV. Boston, Ginn & Co., 1893. — 249 pp.

This is a volume constructed on a system. The author has a thorough belief in the continuity of Aryan tradition in the various cognate races, and feels confident that he may justly predicate of Greece a custom or usage which he finds among the Hindoos, if it bears a primitive character. The principle has been used and abused before. Fustel de Coulanges, Schrader and others have used it; our author thinks that it has been abused when it has been extended beyond the Aryan peoples, and made the basis for inferences from any barbarous tribes, without regard to their nationality, their origin or their habitation. Apparently he will not admit that human nature is largely the same under primitive conditions, and that it works its way from infancy to settled age along lines that are similar because they are human.

In order to carry out his system to a logical conclusion he lays the foundation of the Athenian constitution by tracing the primitive customs and usages of the Aryan peoples, especially the Hindoos, the South Slavonians, the Romans and the Greeks, and he devotes a chapter to the "Patriarchal Theory," another to the "Aryan Gens," a third to the "Grecian Gens," and a fourth to the "Phratry and Phyle," before beginning definitely upon the Athenians. Here the general principles are secured which are to solve the intricacies and the doubts, and to supply the lack of information, which have been the torment and the despair of many a historian. In some respects it recalls the royal road built from capitol to capitol without swerving a hair's breadth from the straight line, and without regard to towns that lay off its route. It has its advantages for the through traveler, but it presents some difficulties to the one who wishes to take in the whole district. Not that exception can be taken to this

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comparative method as a whole. It is one of the greatest of factors in all scientific labor. It is employed here, too, with ingenuity, learning and a wide grasp of the subject. It brings illumination to many dark places, and sets forth the results of many treatises with perspicuity. However, there is a tendency at times to draw conclusions which remain doubtful, and to force analogies which are not justified by the evidence. An example may be instanced in the assumption that there existed a body of clients in Attica which Solon freed, and which are to be compared with the serfs of Gortyna. The theory is not new, but its supporters are rare.

In addition to the Aryan analogies brought to bear upon the constitution of Athens, the author has utilized the material which recently came to hand in the Aristotelian treatise on that constitution. This he rightly accepts as a genuine work of the great philosopher, Draconian chapter and all. This part of our book constitutes one of its chief merits, for it digests in convenient and well-weighed form the results which are to be obtained from this invaluable treasure. Stopping at the Peloponnesian War, our author does not follow Aristotle to the conclusion of his work, but the main substance is covered, as the constitution was fairly established by 430. The book is a distinct addition to our sources for study, and is suggestive even where one may not agree with its conclusions.

COLUMBIA COLLEGE. A. C. MERRIAM.

Labor and the Popular Welfare. By W. H. MALLOCK. London, A. and C. Black, 1893. — 12mo, xi, 336 pp.

Mr. Mallock discusses the social claims of the masses from the standpoint, practically, of the modern English economists. First dismissing socialistic schemes for a new and equal distribution of the national wealth or income, by pointing out their physical impossibility, he shows further the ridiculous consequences of more moderate proposals in this direction. The rentals of the landed aristocracy, for instance, would, if divided, give each man twopence a day, while the monarchy costs each inhabitant less than sixpence halfpenny a year, "the price of drinking the queen's health in a couple of pots of porter."

The striking features of the analysis of production which follows are the clever use of income tax statistics and the emphasis laid upon ability rather than labor as a factor of industrial progress. The causes of the progressive production of wealth are land, capital

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and human exertion. The last is divisible into labor and ability. "Labor is mainly muscular exertion. . . . History shows us that it is not progressive except within very narrow limits, that were reached, at all events, by the end of the last century." "Ability, on the other hand, is essentially mental or moral exertion capable of affecting simultaneously the labor of an indefinite number of individuals." Its inventions, enterprise, persistence and powers of organization make possible increased production and the accumulation of capital. Wage capital enables men to complete the longer and more profitable undertakings and permits the exceptional qualities of a few men "so to animate, to organize and direct the average physical exertions of the many as to improve, multiply or to hasten the results of that exertion without increasing its quantity."

What part ability has had in the increase of the national income of the United Kingdom during the last hundred years from £140,000,000 to £1,300,000,000 is now easily reckoned. The population in 1800 was 10,000,000; the population now is 38,000,000. Average production was then £14 per head; it is now £35 per head. Premising always that labor is not progressive, and assuming that even in 1800 labor produced the whole of that income, eight hundred millions of the present income must be credited to ability. Labor, however, is taken to bear the same numerical proportion to ability as the portion of the male population over sixteen years old, gainfully employed and exempt from the income tax, bears to that portion paying the tax on £150 or more. This ratio is 94 : 6. That is, six per cent of the industrial population produces over two-thirds of the national income. But labor's reward has constantly increased. In 1800, 10,000,000 laborers received £70,000,000; in 1860, £160,000,000; to-day, £200,000,000 per annum. The present annual income of the British laboring classes is estimated at £660,000,000, or £47,000,000 a year more, in proportion to their numbers, than the entire national income in 1843.

Mr. Mallock does not fail to emphasize the significance of this remarkable progress, and to show how much more the existing system has done and is doing than the most sanguine socialist ever promised. Then by the help of Mr. Giffen's statistics, the author indicates how labor, and not rents or interest, has gained more than any other factor of production from the last half century of economic progress. The causes of this progress are found in man's pursuit of his individual interest, *e.g.*, in increasing the return from a given effort, and in his deliberate and concerted action under-

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taken for the advantage of a class, *e.g.*, trade unions and so called "socialistic" legislation. The cause of labor's greater gain is in the competition of ability with ability for the services of laborers, and in the fall of the rate of interest. But the increase of labor's share has its limit at the point where the productive powers of ability end and the effective inducement to the exertion of ability vanishes. Within this limit the just hope of labor is yet enormous — so great, indeed, that within thirty years, thinks Mr. Mallock, labor will enjoy some £1,300,000,000 a year, a sum equal to the whole of the present national income.

It is well that the reader is warned in the preface of the necessity of qualifying and adding to the propositions laid down in these pages. A work such as this, intended to be popular, if read as "popular" books usually are, is liable to cause as many misconceptions as it removes, particularly when the arguments on a broad question are so compressed and based to so great an extent upon statistics. The premise that labor is unprogressive — that its productivity, unsupplemented, is stationary — is specious, but will seem to many unjustified by the facts. Nor can one accept all of Mr. Mallock's theoretical statements, though here, of course, their very conciseness may cause the difficulty. Generally, however, the reasoning is very clear, the arrangement logical and the literary treatment charming for its interest and animation.

COLUMBIA COLLEGE. ROELIFF M. BRECKENRIDGE.

The Organization of Charities; being a Report of the Sixth Section of the International Congress of Charities, Corrections and Philanthropy, Chicago, June, 1893. Edited with an Introduction by DANIEL C. GILMAN, LL.D. Baltimore, The Johns Hopkins Press, 1894. — 8vo, xxxii, 400 pp.

The committee which had charge of the section on charity organization at the Congress of Charities in 1893 determined to utilize the occasion to make a collection of papers from the best informed persons, which should present the actual status of charity work in the different countries of the world at the present time. A permanent service has thus been rendered to all interested in the subject, more useful, perhaps, than the meeting of the congress itself. The present volume contains these essays, nine from the United States, fifteen from England and Scotland, six from Germany and one each from France, Italy and Russia. There are, in

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addition, an introduction by President Gilman, an essay on "The Problem of Charity," by Dr. Francis G. Peabody, and an excellent report of the debates and discussions.

The keynote of all the papers as well as of the discussions is naturally enough the necessity of organized charity. Mr. Kellogg emphasizes the well-known principles of charity organization in giving the history of such societies in the United States. The history as a whole is one of steady progress, of intelligent experimenting and of healthy diversity of development according to local needs and personal influences. The chief features of systematic charitable work are further emphasized by special papers on Labor Tests, Friendly Visiting, Registration, Coöperation of Public with Private Charitable Organizations and State Charities Aid Societies. Taken together they form an excellent survey of charity methods in the United States.

Of equal interest and even greater completeness are the papers from Great Britain. They were brought together by Mr. C. S. Loch, secretary of the Charity Organization Society of London, and were especially planned to present all the phases of charity work. Thus we have papers on charity relief from four different sections of London — the West End, the East End, Islington and St. Olave's. We have the experience in a small agricultural union, Bradfield, an industrial town, Rochdale, a great city, Manchester, and a Scotch town, Aberdeen. The problem, the methods of work, the character of the organization and resources differ in these examples, so that we have a fair presentation of difficulties and of ways of meeting them. Other papers deal with certain peculiarities of English charity work, especially with public poor relief.

In Germany, again, we have the general and the particular phases, such as the Elberfeld system, brought out in a systematic way. Dr. Victor Böhmert of Dresden, in particular, discusses the general principles of charity organization and the growth of the system in Germany with admirable thoroughness and sympathy. Three papers present the advantages and the weak side of the Elberfeld system which has attracted so much attention.

On the whole, although this volume has not the advantages of a systematic treatise, yet it is a very excellent collection of original material, which will be full of interest for persons engaged in active work or in study in connection with one of the most pressing problems of practical sociology.

RICHMOND MAYO-SMITH.

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Wirthschaftliche Fragen und Probleme der Gegenwart. Studien zu einem Systeme der Reinen und Technischen Oekonomik. Von Dr. EMANUEL HERRMANN. Leipzig, C. F. Winter, 1893. — vi, 480 pp.

This volume follows one by the same author entitled, *Technische Fragen und Probleme*, and is to be followed by one dealing with pure economics. Its title might have been *Progress and Poverty*, or *Das Kapital*, since it treats broadly the development of industrial society, and gives the author's views on the three specific subjects included in the titles mentioned. The conclusions, however, are diametrically opposed to those of George and Marx. "At the beginning of the world was labor, and at the end thereof will be capital," might be an appropriate conclusion, Dr. Herrmann thinks, to a comparative study of economic history. He says that the first three-quarters of the present century were given up to improvements in the technical processes in industry, and that the last quarter seems likely to witness the reorganization of industrial society itself. "We live in a time of industrial reformation." The centralization of industry is taking place through three agencies — organization of labor, organization of capital and the extension of the functions of the state. His treatment of these much-talked-about phenomena does not add very much to what has been said on the subject. He is especially careful, however, to note all the ways in which the state is assuming power in industry; and as he has special knowledge of the facts of recent industrial history in Austria, this part of his preliminary sketch has considerable interest. He dwells particularly on the strict control exercised by the government over those industries which are subject to the internal revenue tax, mentions the nonchalance with which the state proceeds to tax natural monopolies under private management, and concludes that taxes, customs and other, act as a form of compulsory propaganda for the nationalizing of industries. He says that some private industries are still permitted to exist, but only to serve as cows which the state milks by means of taxes. He shows that the policy often resorted to by private corporations, of breaking down a rival by fierce competition preparatory to buying him out, has been followed by Austria in the acquisition of railroads.

Notwithstanding the heavy drift towards the complete nationalization of industry, he does not believe that this is to be the final form of industrial organization. He is a professor in a technological school; and while he admits that, where the technical processes

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have been quite thoroughly perfected or are essentially simple, the state can carry on the industry, he yet holds that under state management the processes must deteriorate and improvement cease. Examples are given of improvements rejected in the manufacturing of tobacco, which is carried on as a state monopoly (pages 55–57). The bad and the common survive.

In trying to find some way in which industry may be saved from the danger of governmental domination, the author enters into an analysis of exchange, and finally of labor. The latter will be to many the most interesting part of the book; for his knowledge of technical processes enables him to show how and why labor has been displaced by machinery. Up to the present the machine is the most energetic schoolmaster for laborers, since it takes away from men only the work that is unworthy of them, while it opens up better forms of occupation. The laborers are ill-advised that resist technical improvements, since where the latter have not been introduced the suffering is greatest (page 381). Snow shoveling, for instance, is the final refuge of the unemployed. It could be as well done by horse-power; but as the employment of men involves no initial outlay and no risk of capital, since the men are fitted for nothing else that needs doing and the contractor can consequently reckon on getting them to work for low wages, they are commonly employed, especially by the municipal governments. The street-car companies more commonly use horse-plows. To pass on to the better process may be hard for the incapable individuals who can do nothing but shovel snow, but in the end it is a benefit to the race by obliging men to fit themselves for something better than shoveling.

Human strength as a source of mechanical energy is an unsatisfactory and very costly industrial agent. It is rapidly being replaced by something more reliable and more economical. A rise in wages without a corresponding increase in efficiency is the surest way of compelling the *entrepreneur* to dispense with human labor as far as possible (page 437). For all mechanical purposes the machine must finally displace the man, because it can be made to occupy less space, to cost less for repair, to work more continuously, and finally, to do more exact and uniform work.

The author divides laborers into several classes, according as the element of drudgery does or does not enter into their work. He has the newer view of the evolutionary economist, who regards man as something essentially mutable, and he shows that drudgery is not only unpleasant but is fatal. Modern industry requires intelligence,

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alertness, ingenuity, the power of managing and adapting forces; but drudgery effaces what intellect a man may have had to start with, and finally leaves him incapable of pursuing even the trade that has spoiled him.

Passing from this valuable study of what might be called industrial selection, the author unfolds his conclusions as to the trend of industrial development. He considers it impossible to maintain or promote industrial progress under a régime of nationalized industry. He says that the social-democrats, so-called, are not democrats at all, but are trying to establish an aristocracy of laborers, which would result in making all labor drudgery. "It is no more possible to get capital without capitalists than to get honey without bees" (page 463). He thinks that we are tending to an extra-political organization of industry through the association of capitalists, perhaps united eventually with other industrial classes. He says that as the state was at one time overshadowed by the church, so now industry is overshadowed by the state. The state developed under the protection of the church, but became stronger than its guardian; and while the church still exists, it has insignificant functions compared with those which it once exercised. In the same way the state, after dominating industry for a time, will eventually lose power over it and retain only the work of administering justice. This empire, not within, but without and above the empire of the state, will be established when industry becomes more fully conscious of its own character and its own unity. The author has faith to look forward to the existence of a central international governing body for the aggregated economic interests of mankind. It is suggested that the transportation enterprises of the world will probably be the first to unite.

This universal trust arrangement appears more startling as I have stated it than when it is elaborated and defended in Dr. Herrmann's work; but even so, in any form it serves to give an idea of the courageous nature of his speculations. Whether it be chimerical or not, its promulgation cannot detract from the solid value of the author's work in describing the effect of improvement in technical processes upon industry, and especially upon laborers, and in analyzing the different sources of man's industrial efficiency.

A. G. WARNER.

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Social England: A Record of the Progress of the People in Religion, Laws, Learning, Arts, Industry, Commerce, Science, Literature and Manners from the Earliest Times to the Present Day. By Various Writers. Edited by H. D. TRAILL, D.C.L. Vol. I: To the Accession of Edward I. New York, G. P. Putnam's Sons, 1894. — 504 pp.

When we have been giving for two or three years much of our thought to the maintenance of an unpopular scientific position, and then suddenly and unexpectedly learn that one of the *dii majores* of scholarship, to whom we have been accustomed to look up, has decisively taken his stand on the same position — life has few moments of less alloyed satisfaction! Some such feeling as this the reviewer had when, turning over the collection of papers — excellent, good and indifferent — which Mr. Traill has got together, his eye lighted on two or three sentences such as these from the pen of Mr. York-Powell:

[Of Roman Britain] The arable fields were neatly tilled, mostly in the Roman fashion, on the three-field course . . . Along the roads, at intervals of a few miles, stood neat and comfortable country houses, after the Italian fashion, each with its farm and corn fields tilled by slave or serf labour. [Page 121.]

[After the English Conquest] the slaves and bondmen seem to have lived and worked precisely as they had for their former masters. [Page 122.]

The German theory, formerly generally accepted, that free village communities were the rule among the English, seems to have little direct evidence to support it. The English conqueror found estates cultivated by British *servi* and *liberti* and *coloni*, according to certain rules and customs, for the profit of the *dominus* and *patronus* and their own living. He stepped into the Roman patron's or even the earlier Celtic chief's place, exacted his dues and farmed more or less after his fashion. [Page 125.]

That the greater number of the upper classes of Roman or British blood were either expelled or slain is likely throughout the country; but that the land was continuously tilled in the same fashion, and chiefly by people of the same stock, from the time when the Romans came to the time of Henry VIII, now seems pretty certain. [Page 132.]

To hint at conclusions like this, — not to state them dogmatically, but to venture to put forward facts which seemed to point in this direction, — was to bring the *Saturday Reviewer* down upon us, but a short time ago, as "anti-German iconoclasts." Now that one of the few men in England who really knew much from the original

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sources of Old German life has finally thrown "the German theory" overboard, perhaps the time has come for the temper of orthodoxy to give way finally to the temper of science.

In the opinion of the present reviewer this will be the main result of Mr. York-Powell's pronouncement. It will help to clear the air; it will render more possible the discussion of the fundamental question at issue without exacerbation. But it is hardly a new or positive contribution to the discussion. Mr. York-Powell adduces no fresh data: and his one new argument, which is that the facts of the English language show that it is to a great extent "the tongue of one people spoken by another," he brings no evidence to support. It is to be hoped that the battery of criticism will induce him to work out the lines of argument, philological and other, that have led him to his conclusions.

It must be confessed, indeed, that the time has not yet come for the positive reconstruction of early English social history; and Mr. York-Powell's own attempt is far from being completely satisfactory. The two crucial questions would seem to be these: What became of the rank and file of the English invading hosts? and what was the relation between the "small" freeman of early English times and the open-field system? Mr. York-Powell answers the first question in this wise:

> A stretch of country would be marked out into lots according to the number of *vills* or estates, and these lots would be dealt out by hazard in some hallowed and accustomed fashion among the conquerors — the leaders of the newcomers taking several shares, and *a small knot of brothers or kinsmen counting as one allottee* . . . Two or three homesteads for the English yeomen and gentlemen, and some dozen or score of rush-thatched wattled cots for their British serfs and bondmen housed the stock and labour that worked the land that had belonged to the deserted *villa* of a Roman landlord. [Page 123.]

Much as the present writer is inclined to agree with Mr. York-Powell as to what probably took place, he cannot help saying that in the first place this is all pure speculation (none the worse for that, if only it be remembered), and in the second place there is a broad gap between this and the practically complete manor of the tenth century pictured in the *Rectitudines* — which the writer quotes a page or so further on as if it described much the same thing. The second question, the relation between *status* and the open field system, Mr. York-Powell does not attempt to touch.

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The reviewer must plead in excuse for the apparently disproportionate space here given to one of the papers in the volume, that the question which is involved is so fundamental that no clear thinking is possible on early English constitutional or social development without some sort of preliminary conception as to the position of the mass of the people. That the insistence on its importance is often regarded as almost fanatical, but shows how little clear thinking there is.

And now, as the volume is one which is sure to pass through several editions and to be very generally consulted, it may be useful to call attention, not to its merits, which are many, but to a few defects which may be removed upon revision. The poorest work in the book is to be found in the sections on "Social Life and Manners," by Mr. P. H. Newman. In knowledge and judgment it is not, perhaps, inferior to a good deal of historical journey-work that passes muster: it is its association with superior work that reveals its poverty. In style, however, it is susceptible of a good deal of improvement. On page 221 is a passage to which it is hard to assign a meaning: "The king's prerogatives were considerable: he had . . . the power of summoning the witan, and they with him framed the laws. *It is worthy of remark that his word was taken without oath.* This is curiously reflected in many of the laws referring to witnesses"; and then the writer proceeds to quote from that erudite work, the "Report of the Royal Commission on Market Rights," a couple of passages from the Saxon laws, apparently in blissful ignorance of the existence of Thorpe or Schmid. Some fatality dogs the sections on "Social Life" in this volume, even when they are anonymous: for when we come to the chapter on the period 1066–1216 we find Holinshed solemnly quoted at great length as, apparently, an altogether reliable authority for the ecclesiastical troubles of the twelfth century (*e.g.*, page 335).

Passing now to the sections that are worthy of serious criticism as to their matter, here are a few *dubitanda*, greater or lesser:

Page 75: "These *collegia* . . . from whom the trade corporations of the middle ages may be said, without much straining of language, to be descended. . . ." One would like Mr. Hughes, the writer of this, to say in what sense he uses "descended": he is no doubt aware that, so far, we have been unable to prove the continuous existence of a single *collegium* into the middle ages proper.

Page 125: Mr. York-Powell makes the *cotsetla* of the *Rectitudines* "unfree." Economically, doubtless he was: but one understands

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that the term is here used in the sense of legal status; and if so, how are we to interpret the clause concerning the *cotsetla* in the *Rectitudines:* "eal swâ ælcan frigean men gebyreth"?

Same page: "The *Village Council* to settle matters of unjust trading and the common tillage and pasture, he [the new English lord of a *villa* group] presided at"—comes oddly after a sentence which tells us that he "stepped into the Roman patron's place," and sounds like an unconscious survival from Mr. York-Powell's earlier convictions. The only evidence for an early Saxon village moot is to be found in the alleged "archaic" features of the village of the later middle ages: and a village moot is hard to fit into the writer's own picture, before quoted, of the "two or three homesteads" of the English "yeomen," and the "dozen or score of cots" for the British serfs.

Page 136: "At first the king of the English would go round with his proposed laws to the several folk moots, getting the separate consent of each." The only support for this, so far as I am aware, is Athelstan 3; and that is hardly sufficient.

Page 138: "To watch the king's interests there was another local freeholder of the better sort, *chosen by his fellows, often at the king's nomination*, as *scir-gerefa* or *sheriff*." What is the evidence for this? Is it not a part of the imaginary democratic golden age which people used to find in Saxon times? And do not the first five words of the sentence make it somewhat improbable?

Following Walter of Henley, the *hide* on page 123 is made 180 acres on the three-field system, and 120 on the two-field. On page 238 we are told by the same writer that it was always "an ideal of 120 acres." As Mr. Round has already pointed out, either of these views is intelligible; but they are difficult to harmonize. While we are mentioning inconsistencies, apparent or real, we may, perhaps, ask Mr. A. L. Smith to compare his own utterances on page 207 about the "usual food," with what he says on page 357 about wheat.

The volume is full of repetition, not altogether explained by the extenuating plea of the editor, but caused to a great extent by the unduly large number of contributors. There is very little feeling of proportion in the editorial arrangement, which has placed what are really considerable treatises on architecture by the side of the briefest generalizations on fundamental social institutions. It is to be hoped that in future volumes the editor will see his way to redressing the ill-proportion; that he will be able to induce his abler con-

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tributors to write at greater length, and that he will allow them a freer hand. Meanwhile, students of social history are grateful for what they find in this first volume: and especially for the fascinating pages of Professor Maitland on jurisprudence, the freshness and independence of Mr. York-Powell, the conservative caution of Mr. A. L. Smith, the sober judgment of Mr. Richards on Roman civilization, Mr. Poole's scholastic lore and Mr. Owen Edwards's pro-Celtic enthusiasm.

W. J. ASHLEY.

HARVARD UNIVERSITY.

Philanthropy and Social Progress. Seven Essays by Miss JANE ADDAMS, ROBERT A. WOODS, Father J. O. S. HUNTINGTON, Professor FRANKLIN H. GIDDINGS and BERNARD BOSANQUET. With Introduction by Professor HENRY C. ADAMS. New York, Thomas Y. Crowell & Co., 1893. — 268 pp.

Bibliography of College, University and Social Settlements. Compiled by M. KATHARINE JONES. Philadelphia, The College Settlements Association, 1894. — 19 pp.

Forward Movements. Containing Brief Statements Regarding Institutional Churches, Social Settlements, Rescue Missions. Boston, W. L. Greene & Co., 1894. — 47 pp.

The announcement by Columbia College of its plan for sociological field work at the University Settlements emphasizes anew the importance of the settlements to students of social science. To the sympathetic observer they offer unrivaled opportunities for the study both of social conditions and of various methods of amelioration. Moreover, the settlement movement is now considered of such importance in contemporaneous social history that libraries are making special collections about it, and bibliographies of the subject are being prepared.

In *Philanthropy and Social Progress* the principles and methods of the settlements are set forth by two leading spirits of the movement, Miss Jane Addams, of Hull House, and Mr. Robert A. Woods, of Andover House. Miss Addams contributes the first two chapters, on the "Subjective Necessity" and "Objective Value" of settlements. In the first she analyzes the motives which lie behind the movement. First, there is felt to be a need to extend democracy beyond political forms to the whole social organism, if democratic government is to be a success. In a democracy it is impossible to establish a higher political life than the people desire; but the

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desire for a higher civic life can be fostered in the whole people only through common intercourse. "Hull House endeavors to make social intercourse express the growing sense of the economic unity of society. It is an effort to add the social function to democracy." The second motive is an impulse to share the race life, and to aid in social progress; the settlement gives useful employment to educated young people who feel this impulse, and thus prevents stagnation. Third, the settlement results from a *renaissance* of Christianity along humanitarian lines.

Mr. Woods, in his paper on "The University Settlement Idea," emphasizes the scientific motive. He insists that "the university and the closely populated city quarter each need the other"; and predicts that the importance of the settlement to the residents and other workers will lead to its becoming an organic part of the university, perhaps one of the professional schools, in which the students may exercise all their varied faculties and learn to deal with men. The paper abounds in practical suggestions.

The chapter by Professor Giddings on "The Ethics of Social Progress" was published also in the *International Journal of Ethics* for January, 1893, and requires no comment here. Two essays by Father Huntington on philanthropy in general, and one by Mr. Bosanquet on the administration of charity, complete the volume. All seven papers were read in the summer of 1892 before the School of Applied Ethics at Plymouth. Those by Miss Addams have also been published in the *Forum*.

Miss Jones's compilation is invaluable to any student of the subject. It is really much more than a bibliography, for it quotes from many of the books and articles in such a way as to give in small compass the history and meaning of the settlement movement, besides a brief statement regarding each of the principal settlements in England, Scotland and America. *Forward Movements* also gives a sketch of each of the settlements in the United States, together with some of the leading institutional churches, and a list of rescue missions in Boston and New York City. This little pamphlet is of more recent publication than the other, and at a time when settlements are springing up all over the country as rapidly as at present, that is a marked advantage. There is a list of nearly twenty American settlements, half a dozen of which were established within the past year. The information regarding them was collected by Rev. Robert E. Ely, of Prospect House, Cambridgeport.

THE UNIVERSITY OF CHICAGO SETTLEMENT. MAX WEST.

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The Distribution of Wealth. By JOHN R. COMMONS, Professor of Economics and Social Science, Indiana University. New York and London, Macmillan & Co., 1893. — Small 8vo, 258 pp.

This little book contains a multiplicity of ideas and suggestions. It is based upon the latest Austrian theories of value, German notions of political economy as a social and ethical science, English conceptions of personal liberty and private property, and the modern denunciation of monopolies and trusts. Acknowledgment is freely made to Böhm-Bawerk, Menger, Wieser, Wagner and Gross; numerous quotations come from Holland's *Jurisprudence;* and we occasionally catch sight of Henry George and Karl Marx. The author has evidently studied extensively and the book is eclectic in its composition and ideas. The illustrations (examples) are fresh and attractive, the statistics are of the author's own collecting and the book is provided with the diagrams of the mathematical school, if not with the mathematics itself. From such a combination, with the added advantage of an excellent style, we should certainly expect something weighty and important.

The author in his first chapter elucidates the theory of value, price and cost, following the Austrians in their theory of marginal utility. This he declares to be a serviceable conception and to give a scientific basis for explaining the fundamental question of value, namely: What are the forces which control the supplies of commodities relatively to the demands? The answer (at the end of the chapter) is:

> The price of a commodity is determined by the expenses of the production of the most expensive part of the customary supply. This supply is determined by the relative power possessed by the different coöperating productive factors, of limiting their share of the total product relatively to the wants and resources of society.

What are these factors? They are (Chapter II) land, capital, personal abilities, monopoly privileges and legal rights, taxes and labor.

The important step now is to determine which of these factors are able to limit their share of the total product. Those that are replaceable, labor and capital, cannot, of course. It is only those that are irreplaceable or that occupy the position of monopolies, that can limit the supply and thus control prices in their own interest. The first of these factors is land, and this leads us to the consideration of the law of "Diminishing Returns and Rent" (Chapter III).

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This law applies not only to agricultural land but also to land used for manufactures; for under land is to be understood not the inexhaustible powers of the soil, but simply room and situation. Hence in all industry there is one factor capable of monopolization. There is no no-rent land (following Patten) and therefore rent enters into the cost of production. Still further, the law of rent or surplus values can be extended to other elements besides land, namely, the monopoly privileges of patents, copyrights, trade-marks, franchises and good-will (page 157). These opportunities, as well as the ownership of land, are due to social and legal relations, and give their owners a certain power to limit supply and to control the amount of production (page 169). We have here a law of monopoly profits analogous to rent.

Having thus made the law of rent applicable to all land and to most manufactures (for five-sixths of the manufactures in the United States are covered by patents, copyrights, trade-marks, *etc.*), we can easily see the relation of "Diminishing Returns and Distribution" (Chapter IV). Laborers find it difficult to restrain their numbers and hence to prevent the law of diminishing returns from pressing wages down to the minimum of life. In the same way, if capital seeking employment is abundant, capital will force itself into employments where the margin of production is lower, and the rate of interest will be reduced to a minimum. There remains the matter of profits for the entrepreneur. Here the author concedes "necessary" profits as a compensation mainly for risk and trouble of management, and thinks it about "double the current rate of interest, *i.e.*, including interest itself" (page 193). He even concedes a fair wages of superintendence. There is also an element of personal profits, due to the exceptional ability of the entrepreneur (in Walker's sense). Finally there are the permanent profits which arise out of the monopoly privileges which have already been described.

> With the lessening of expenses on account of labor and capital, brought about through the progress of civilization, either by the increased efficiency of both or by lowered wages and interest, there remains a continually growing surplus falling to the owners of monopoly privileges, which becomes petrified in the form of rent and permanent monopoly profits. [Page 228.]

Chapters V and VI give some slight statistical data going to show the existence and the importance of this permanent monopoly profit. But the real content and purpose of the book is summed up in the above quotation.

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Now there is no doubt that the scientific elaboration of the theory of monopoly price is one of the most important problems which confronts the newer political economy. The whole world of economic theorists is groaning and travailing over a theory of distribution based on marginal utility. Economists are tumbling over each other in the race to be first in applying the doctrine of rent to the other shares in the distribution, and we hear of the "three rents," of the last dose of capital, of the marginal hour of the working day, *etc.* Out of this intellectual ferment it is not too much to expect that we shall finally behold the clarified outline of an economic law which will, from its beauty and simplicity, commend itself to universal acceptance. All honest and capable striving towards this goal is to be cordially welcomed, and it is in this sense that we welcome Professor Commons's essay. There are, however, two criticisms to be made, one in regard to method, the second in respect to facts. They are as follows :

The elaboration of the theory of distribution demands perfect impartiality or scientific indifference as to the consequences of the theory. There must be no hidden purpose underlying the argument, if the author wishes to command the best attention of his readers. Professor Commons, while declaring that the entrepreneur's personal profits should be secured, does not conceal his belief that permanent profits are very large, are undeserved and should be appropriated by the state. This bias is observable throughout the book. The author professes (in his preface) to be cutting a straight line through a tangled jungle ; but to many readers it would seem rather as if he were taking every path, whether to the right or to the left, which might bear to some pre-determined goal. If he has done this consciously, his book should be classed with Marx's *Capital*, as a skillful polemic concealed under elaborate scientific *formulae*. But then he should have been frank and said with Proudhon : "I choose to put my conclusion [Property is Robbery] at the beginning of my book ; I am within my right." This *Tendenz*, as the Germans would call it, whether conscious or unconscious, is unfortunate, because the mere agitator will believe that his practical conclusions have scientific support, without troubling himself to understand the argument ; while the scientific reader will hesitate about accepting many statements which need much further elaboration. In this latter connection, the attempt to show (page 29) that the qualities of the soil, except mere surface, are embodied in capital rather than land, is not at all conclusive. In regard to the assertion that "rent must enter

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into cost," so distinguished a theorist as Edgeworth declines "to estimate what weight is added by Professor Wieser to a balance in one scale of which is the authority of J. S. Mill and in the other scale that of Professor Marshall."[1] The statement that five-sixths of the manufactures in the United States are carried on under patents, as showing the great prevalence of monopolistic opportunity, is misleading; for patents compete against each other. There are doubtless a dozen steam pumps covered by different patents, but accomplishing so nearly the same result that they are all made and sold in the same market. Does his patent enable any one of these manufacturers to limit the supply? There are hundreds of brands of manufactured tobacco, each protected by a trade-mark. Does that constitute a monopoly for each manufacturer? If I edit a "Universal Library of Knowledge" and copyright the title, have I a "corner" in the literary market? And again, as a matter of fact, is it so easy to turn personal profits into permanent monopolies, and is it so universal as would seem to be indicated by the following passage?

> A wise public policy will encourage to the utmost the development and rewards of personal abilities in the organizers and promoters of business. But the case becomes entirely different when temporary profits have been transformed into permanent monopolies. Now, instead of the profits being due to the powerful exertions and abilities of the captain of industry, they are due to certain fixed social relations and rights. The recipients of these incomes may, with perfect security, become idlers and drones. They abdicate their functions as entrepreneurs into the hands of salaried chiefs and advisers. [Page 236.]

One should compare with this Walker's picture of business ruined and fortune dissipated by the succession of an incompetent son, or the death of the partner who made the enterprise successful.

A second demand that may be made upon an author discussing scientifically the distribution of wealth is that, where he considers legal and social relations to be factors in such distribution, he should describe them as they are, not as he thinks they ought to be. By not exercising sufficient self-restraint in this respect, Professor Commons, as it seems to me, falls into hopeless confusion in his discussion of "rights" (Chapter II). His definitions are from Holland and refer to juristic rights. But in much of his discussion he evidently has in mind merely moral rights, founded upon his own

[1] British *Economic Journal*, June, 1894, p. 285.

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notion of social justice. The right to life includes, he says, the right to a minimum of subsistence. A legal right to poor relief would be difficult to prove in many countries, however moral it may be. On page 66, personal rights are classified as those of life, liberty, *employment* and marriage; yet on page 80 it is declared that "the right to work, for every man that is willing, is *the next* great human right to be defined and enforced by the law." There follows an economic statement which is "important if true":

> The right to employment, when enforced, would have the effect of guaranteeing to every worker, even the lowest, a share of the total income in excess of his minimum of subsistence. It would give steady work through the year, which would increase the wages of the lowest laborer by thirty per cent or fifty per cent. And by overcoming the chronic excess of laborers beyond the opportunities of employment, it would raise the marginal utility of the marginal laborers, thus raising the wages of all. [Page 84.]

On the other hand, the unrestricted right to marriage is "one of the most powerful causes for [*sic*] the material and mental poverty of the lower classes" (page 85). The right to an education furnished by the state is included in the right to liberty (page 70).

I make these quotations not because I agree or disagree with them, but because they show how the author introduces purely subjective notions into a scientific discussion and thus mars, in my opinion, the value of a book evidently planned on scientific lines.

RICHMOND MAYO-SMITH.

Ueber Wert, Kapital und Rente; nach den Neueren Nationalökonomischen Theorien. Von KNUT WICKSELL. Jena, Gustav Fischer, 1893. — 143 pp.

Die Lehre vom Wert. Von Dr. MORIZ NAUMANN. Leipzig, Duncker & Humblot, 1893. — 74 pp.

The first of these works is written in Sweden and published in Germany; but the spirit of it is Austrian. It contains, first, a critical review of theories of value, and secondly, certain contributions to scientific thought on this and kindred subjects. The summary of older theories is distinguished by a high appreciation of the work of Ricardo. Like Professor Marshall, the author interprets the words of this early classical economist generously, and finds in them more of meaning than narrower interpretations afford. He gives credit to the mathematical work of Jevons and Walras, and in

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particular to that of Launhardt, and makes on his own part contributions to mathematical economics; but it is from the work of Böhm-Bawerk that he has derived the largest suggestions. In the fact that "the length of a period of production is here for the first time made to be an independent concept," he finds in the work on *Capital and Interest* the beginning of a fruitful scientific development.

The author accepts Böhm-Bawerk's definition of interest, that it is a premium on present goods as compared with future goods; yet he thinks that this does not involve a discarding of older explanations of interest. The new view appears to him to be fruitful in connection with studies of the origin of capital, rather than with those connected with the rate of interest. In studies dealing with the rate of interest, productivity is, almost from necessity, recognized. A special service rendered by the author is the application to problems connected with land of the principles that are at the basis of the Austrian studies. Mathematical modes of presentation are here used, and the relations of land, labor and capital to each other are examined. There is a concluding study of exchange as related to production.

Wicksell's work is, throughout, clear and suggestive, and is the precursor of a larger volume that is to appear in the near future.

Dr. Naumann's little work is a contribution to precise thought concerning utility and value. It follows, in the main, the line of the Austrian doctrines on these subjects, but criticises those doctrines as failing to give to "cost value" a position of sufficient distinctness, and as failing to emphasize sufficiently the contrast between the ground of subjective valuations and the ground of objective valuations.

In this work money is treated as a commodity, and the value of it is illustrated by a diagram that suggests, but does not exactly duplicate, certain points in recent American studies. In the case of a man whose fortune is fixed in amount, small quantities of money have uniform subjective values, while large amounts have unequal values. One dollar is worth as much to him as is another; but one sum of a hundred thousand dollars is worth far more to him than is a second and like sum. The uniform value of small units of money makes it an available measure of value.

Naumann has in this work rendered a service to scientific thought by the exact and yet extended significance that he attaches to the terms *Lust* and *Unlust*. It is not merely things that appeal to the senses and give conscious pleasure that possess utility. If conscience

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prompts a man to get a thing, against the dictates of the physical sensibility, the article gives gratification, in the economic sense of the term, and has utility.

The style of the work is singularly clear and exact.

AMHERST COLLEGE. JOHN B. CLARK.

The Condition of the Western Farmer, as Illustrated by the Economic History of a Nebraska Township. By ARTHUR F. BENTLEY, A.B. Johns Hopkins University Studies in Historical and Political Science, July–August, 1893. The Johns Hopkins Press, Baltimore. — 92 pp.

By means of a painstaking and laborious study of the history and statistics of a little township in Hall County, Nebraska, Mr. Bentley has given us a detailed view of the economic condition of a small group of farmers that compares well with some of the German investigations into the economic condition of selected companies of workingmen. The historical chapters are excellent and the statistical compilations well arranged and well chosen, so as to convey immediately the significant facts to which they relate.

If any fault is to be found with the monograph, it is that the title is too broad, tending, as it does, to impress one with the idea that the results obtained from the study of a single township can be accepted as true of the Western farmer in general. This may be so, but Mr. Bentley has not proved it. He seems to have assumed this in advance, and to such an assumption must be ascribed what appears to be a slight error of method. In the introductory chapter (page 9) he alleges, as one argument in favor of his intensive system of studying the economic condition of the farmer, that "the figures obtained agree, if rightly interpreted, with such analogous figures for the whole state as the census of 1890 has as yet made known." Yet in order to arrive at his own figures on the important question of farm mortgages, he makes a deduction of 5.21 per cent from the recorded sums, because "it has been shown by the census of 1890 that that per cent is the average proportion of partial payments upon real estate mortgages in Nebraska" (page 61). He thus uses the census to verify figures that have been based upon census calculation. This is unscientific.

To take these results as typical, then, is not warranted by the facts disclosed. The chief value of Mr. Bentley's work must depend upon the impetus it may give to other similar studies whose results

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can later be compared with his. He portrays the outlook for the "average farmer" as far from bright, and finds the principal cause of this in the speculative prices to which farm lands have been driven by constant immigration. The antecedent careers of the incoming settlers form one topic which the author has omitted to treat — a topic which, it seems to me, might throw valuable light upon the question whether or not farming is an unskilled occupation to which those who have failed in other fields turn, only to meet with their usual ill-success.

VICTOR ROSEWATER.

OMAHA, NEBRASKA.

Die Grundzüge der Finanzwissenschaft. Von Dr. WILHELM VOCKE. Leipzig, C. L. Hirschfeld, 1894.—xii, 446 pp.

This work, which constitutes the second volume of Frankenstein's *Hand- und Lehrbuch der Staatswissenschaften* (*cf.* this QUARTERLY for March, 1894, page 179), is devoted to the general principles of the science of finance. It is a relief, after the huge and many-volumed German works on the subject, to find the science treated as a whole and in so compact a form. In other respects also, Dr. Vocke's work differs from most of its German predecessors. It contains almost no references to literature and it is written in a style calculated to interest the average layman. Dr. Vocke has long been favorably known by his comprehensive work on *Die Abgaben, Auflagen und die Steuer.* This was devoted to the elucidation of some peculiar ideas on which he laid especial stress. To those acquainted with that former work, the present volume will not bring much that is new. But it is worth while to call attention briefly to some of its fundamental conceptions.

Dr. Vocke looks upon financial history simply as the medium of bringing out more and more clearly with every generation the idea of faculty in taxation. So far does he go in this, that he takes the rather extreme attitude of confining the term tax to direct taxation, and eliminates from the whole field of compulsory revenue the so-called *Verbrauchsauflagen*, or indirect taxes on consumption. This was one of the characteristic points of his former work which he has not seen fit to alter. His whole classification of revenues is very confusing. On the one hand he puts the private economic revenues, by which he understands the public domain and the prerogatives as well as industrial undertakings, while on the other hand he puts the compulsory revenues, divided into fees, payments for transactions

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(*Verkehrsabgaben*) and taxes. In between these he puts another category, the so-called "mixed" revenues, which he again curiously enough divides into economic monopolies, fiscal monopolies and imposts (*Verbrauchsauflagen*). It will be seen at a glance how unmodern this classification is, and how little Dr. Vocke has profited by recent discussion both at home and abroad.

At the same time, in his discussion of taxation we find a great many good points, *e.g.*, his treatment of the place where a tax ought to be paid, involving some of the difficult questions of double taxation. The most noteworthy part of the book, perhaps, is the discussion of the norm of taxation and the measure of faculty, in which he treats successively of property, produce and income. Undue stress, perhaps, is laid on the second of these, although the author cleverly exposes some of the exaggerations of his predecessors. Most of the book is of interest chiefly to Germans, but there are certain broad traits of industrial development common to all countries; and students of American public finance will find in Dr. Vocke's volume many hints which can be fruitfully applied to conditions at home. The bibliography is very weak, especially as regards foreign literature. But the book can, with important reservations, be recommended to advanced students.

E. R. A. SELIGMAN.

Revue du Droit Public et de la Science Politique en France et a l'Étranger. FERDINAND LARNAUDE, Directeur. Nos. 1 and 2. Paris, Chevalier-Marescq et Cie., 1894.

This very substantial bi-monthly gives one more evidence of the activity and scientific spirit which characterize the French "faculties," and which have made them in fact, even if not yet in name, the universities of the nation. The new review emanates from the Faculty of Law at Paris, where Professor Larnaude occupies the chair of public law. There is a notable recognition of the cosmopolitanism of science in the program of the publication, and the list of "principal contributors" includes representatives of all the leading, and most of the minor, institutions of higher education in the civilized world, with a considerable sprinkling of lawyers and publicists. The field which the review proposes to cover is very well indicated by the name. It is that of the POLITICAL SCIENCE QUARTERLY, with especial attention to the legal side of the subject. And Professor Larnaude promises that the scientific treatment of questions of present practical importance will be a particular feature.

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In addition to the leading articles and reviews in each number, a "*Chronique Politique*" will sketch and discuss the current political life of the leading nations.

In the two numbers that have come to hand there are, among others, articles on the modification of the press law due to the recent Anarchist agitation, on the Franco-Siamese incident of 1893, on certain effects of commercial treaties on internal administration, and on the reform of German imperial finances. These subjects show well the "timely" character of the review's contents. The treatment of these subjects conforms well to the scientific standard set by the editorial program, and it is easy, therefore, to appreciate the really valuable work that is to be expected of the new undertaking.

Perhaps there is a bit of over-wide generalization in the statement (No. 2, page 402), based on the announcement of an optional course in declamation in the law school of the University of Michigan, that "the faculties of law in the United States give a certain place in their instruction to the study of declamation and the art of oratory."

WM. A. DUNNING.

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BOOK NOTES.

EVERY lawyer, every one interested in legal education, every one who has at heart the development of the legal and political sciences, should read more than once the wise and earnest words with which James Bryce closed his twenty-three years of service at Oxford as Regius Professor of Civil Law. Of his valedictory lecture, *Legal Studies in the University of Oxford* (Macmillan, 1893), the greater part is naturally devoted to his own subject, the Roman law, and contains a characteristically judicious estimate and felicitous statement of its value to the English law student; but the wider title of the address is justified by a most suggestive sketch of the growth of serious legal study at Oxford during the last twenty years. That such a school as he describes, "with the best arranged and most practically useful law examination in the United Kingdom," with such names upon its list of teachers as those of Maine, Holland, Markby, Pollock, Digby, Anson, Dicey and Bryce himself, should, after such a period of labor, produce yearly but twenty to twenty-five candidates for its degree, and that Dr. Bryce should find in these numbers cause for gratulation, may well serve to temper our national haste for quantitative results, and hearten American workers in the same field.

The attack upon the positive theory which Mr. Geo. H. Smith opened some years ago in his *Elements of Right and Law* is renewed in his *Critical History of Modern English Jurisprudence* (San Francisco, Bacon Printing Co., 1893). The difference between Mr. Smith and the modern English positivists really reduces itself to this: he maintains that "natural law" is a part of the law actually recognized and enforced in modern society, and that it is law before it receives any recognition at the hands of legislators or courts; they deny this, but they do not deny that the instinct and tendencies which make up the so-called law of nature are the ultimate source from which the greater part of all positive law is and always has been derived. This, however, Mr. Smith cannot see. Although he himself defines jurisprudence as "the science of the necessary conditions of rational social life," he cannot see that these "necessary conditions" are, objectively, the same thing as Bentham's "general utility"; and when the positivists deny that the sense of utility, or the instincts of

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right and justice, or the dictates of reason are *per se* law, — and this is the one essential article of their legal creed, — Mr. Smith assumes that they deny the existence of any connection or relation between right and law. In asserting that there is no trace of anything like positivism upon the continent of Europe, Mr. Smith shows that he has no acquaintance with the literature of the historical school.

From the rapidly growing literature of the referendum, supplemented, during a brief visit to Switzerland, by personal study of its operation and results, J. W. Sullivan has drawn the material for a popular treatise on *Direct Legislation by the Citizenship* [!] *through the Initiative and Referendum* (New York, Twentieth Century Publishing Co., 1892). Mr. Sullivan is a socialist, and believes that direct popular legislation will check and eventually destroy "plutocracy." He believes, also, that it will do away with "rings" and "machines," and eliminate professional politicians; but he fails to show how, even in its most perfect development, when the compulsory reference of all bills is supplemented by the popular right of initiating them, direct legislation is to be formulated and carried through without organization, or wherein the organization required will differ from that of our present "machines." He shows that the "initiative and referendum" are now practiced by many American labor organizations; but in these very organizations, unless popular impressions are altogether astray, professional leadership and ring rule are phenomena quite as pronounced as in our state and city politics.

Dr. Mary Putnam Jacobi's *Common Sense Applied to Woman Suffrage* (Putnams, 1894) is a readable and, in parts, an ingenious plea for the political equality of women and men. The argument is mainly based upon the natural-right theory, and upon the assumption that women constitute a social and political "class," which is wrongfully ruled by another class, the men. In the opening chapters of the book the assumed class antagonism between women and men is constantly compared, and with every appearance of seriousness, to that which existed between free whites and negro slaves before our civil war. The gradual acquisition by women of complete economic liberty, and the now frequent extension to them of the local vote, are treated as direct steps toward political power. Ostrogorski's *Rights of Women* is several times cited to show the extent to which the sex has already been enfranchised; but that writer's pregnant distinction between economic and political rights, and his demonstration that local suffrage is granted to women precisely because it is an economic rather than a political right, are not noticed.

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The *Revue Générale de Droit International Public* (Paris, A. Pedone, 1894) is a new journal designed not only to cover the field of international law in the usual sense of the term, but also to embrace such topics as diplomatic history, penal law and the law of public administration. The editors, MM. Antoine Pillet and Paul Fauchille, include among their patrons such names as Clunet, Lehr, Pradier-Fodéré, Renault and Lyon-Caen. The first number of the review contains three leading articles, a chronicle of international events, a bibliographical bulletin, and reprints of certain documents, such as the agreement between Germany and Great Britain for the definition of their respective spheres of action in the Gulf of Guinea; the convention between Belgium, France, Greece, Italy and Switzerland, for the modification of the Latin Union; and so much of the last annual message of President Cleveland to Congress as relates to foreign affairs. Of the leading articles, the first, which is by M. Pillet, is of an introductory character, and relates to the elements, the domain and the objects of public international law. The other two, by Professor F. de Martens and Professor Renault respectively, treat of certain aspects of the Behring Sea Arbitration.

In the first volume of Mr. Huxley's collected essays, entitled *Method and Results* (Appleton, 1893), are to be found four of his well-known contributions to political discussion. The four are all in the same field, and each has a bearing on the origin and validity of current doctrines in reference to governmental activity. Mr. Huxley has always wielded a vigorous pen; and his lusty assaults have made sad havoc with the philosophical supports of Spencer's and George's theories. Nor have the earlier systems of Hobbes and Locke and Rousseau fared much better. The essayist's mission has been, as he says, "to grub up those old stumps of the *a priori*, which stand in the way of the very foundations of a sane political philosophy." No student of scientific politics can afford to leave Mr. Huxley's work out of account; and it is of the greatest convenience to have this work presented in a single volume.

The Natural Law of Money, by William Brough (Putnams, 1894), advocates entire non-interference of the government in currency and banking, even to the repeal of all legal-tender provisions. Each community would naturally choose that kind of money — gold, silver, or paper — best adapted to its needs. A community cannot progress without money, and all mandatory action on the part of the government is useless and worse than useless, for it interferes with the elasticity of the money supply and introduces confusion in regard to

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the nature of the money function. All our financial legislation since 1862 — legal-tender acts, national-banking system, Bland and Sherman bills — has been mistaken. The Canadian banking system is held up as a model. There is little new in the book, but it is a clear presentation of the *laissez-faire* theory of money and banking.

Mr. Charles W. Smith, who writes "after thirty years' experience in the commercial world," has published a work with the somewhat startling title: *Commercial Gambling the Principal Cause of Depression in Agriculture and Trade* (London: Sampson Low, Marston & Co., 1893). Mr. Smith maintains that the present low price of all commodities and the consequent depression of trade are due to speculative or "short" sales of grain, provisions and cotton. He attributes seventy-five per cent of the fall in the price of most commodities in the last fifteen years to this cause alone. At the same time he maintains that buying in to cover such sales does not raise prices, because the sellers for the most part hold actual produce against other sales, and are therefore not forced to buy, — or in other words they are not "short" sellers at all. The remedy advocated is the enactment of laws on the lines of the Hatch and Washburn bills.

Professors Brentano, of Munich, and Lester, of Heidelberg, have begun the publication of a series of reprints and translations of important German and foreign works, under the title: *Sammlung Älterer und Neuerer Staatswissenschaftlicher Schriften des In- und Auslandes* (Leipzig, Duncker & Humblot). The first number is a translation of Beatrice Potter's work on coöperation. More interesting to foreigners are the two following numbers containing reprints of (1) "Die drei Flugschriften über den Münzstreit der Sächsischen Albertiner und Ernestiner um 1530," edited by Professor Lotz; and (2) the monograph on "Liquidation und Restitution der Deutschen Volkswirtschaft nach dem Dreissigjährigen Kriege," edited by Dr. Gotheim. The first of these works has long been famous as containing perhaps the most remarkable discussion of currency matters in Germany, and has been much quoted by German writers. It is printed both in the original text and in a modern German version, and will be welcome to students of economic history. The second work is of more particular interest to investigators of German history and economics, and is for Germany very much what the dialogue of Stafford or Hales is for England. The fourth number in the series is a translation of some of the pamphlets by James Anderson on "Land and the Corn Laws," which have become exceedingly rare in

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the original. It is very much to be hoped that the American and the British Economic Association will soon begin to carry out their promises and do for their respective countries what these two professors are doing for Germany.

The first volume of the *Dictionary of Political Economy*, edited by Mr. Inglis Palgrave, the separate instalments of which have been noticed from time to time in this QUARTERLY, has now been published by Macmillan. It has been edited on the whole with consummate skill, and is far superior to the unwieldy German *Handwörterbuch*, as well as to the rather one-sided and often superficial French *Dictionnaire*. The editor has been very catholic in his choice of collaborators, who comprise men of the most divergent schools and interests. Special attention is given to the bibliography and to the history of economic institutions and doctrines, without at all neglecting the positive theory of actual industrial life. Many of the definitions are models of brevity. The articles on the whole are just and impartial, although we find occasional lapses, as in the article on "Betterment." It goes without saying that the dictionary will be absolutely indispensable to all serious students. The present volume finishes the letter E. The work will be published hereafter, not in instalments, but in complete volumes.

Swan Sonnenschein & Co. have recently issued a translation by the Rev. Arthur Lloyd of the learned work on *Agriculture Insurance*, by Prof. P. Mayet. This is a volume originally written for official use in Japan, and is devoted to a discussion of the Japanese agricultural distress and the best means of relieving it. The author, through his semi-official position, has acquired a thorough acquaintance with Japanese conditions. He attempts to effect the elevation of the peasantry by introducing institutions such as savings banks, agricultural credit offices, and others which have already proved their utility on the European continent. The new feature of the book, however, is the great extension given to the idea of compulsory insurance, which the author thinks should be applied not only in the case of fire, but also for all serious injuries that can affect agriculture, such as hail, floods, insects, plant diseases, typhoons, earthquakes, *etc.* He recommends, in short, a complete system of house, cattle and crop insurance. In view of the fact that the land tax in Japan amounts to seventy-six per cent of the total revenues, and to about one third of the net produce of the land, the importance of the problem becomes apparent. Incidentally, a complete sketch of the history and condition of Japanese public finance

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is given. From the Japanese point of view it would seem that Professor Mayet's plan has much to recommend it. Some of his previous propositions have already been adopted by the Japanese government. Whatever may be the fate of the present project, his work will be found to be most suggestive. A series of important tables in the appendix contain detailed statements of the "Agricultural Distress Funds" as applied in recent years in Japan.

A long-felt want has been partially satisfied by J. J. O'Meara's *Municipal Taxation at Home and Abroad* (London, Cassell, 1894). It may safely be said that not a single work on public finance in general has given any adequate attention to the subject of municipal revenue. The present volume is interesting and valuable chiefly in that it contains full information about pretty much every country in Europe on the subject of local taxation. The chapter on Switzerland is very inadequate, and that on the United States is exceedingly fragmentary. The weakness of the book for scientific purposes is the complete absence of any citation or reference to authorities. The author, who describes himself as a Dublin solicitor, makes out a very strong case for the relative injustice of the British local system. The proposed remedies — the municipal probate duty and the local income tax — are not apt to commend themselves to the good judgment of British reformers. But as a convenient and fairly accurate statement of the European facts the book will receive a hearty welcome from students of finance.

In consequence of the renewed interest taken in the temperance legislation in Great Britain, an English member of Parliament, Mr. W. Rathbone, commissioned Mr. E. L. Fanshawe to visit this country in order to study our system. The result of the extended investigation has now appeared under the title: *Liquor Legislation in the United States and Canada* (London, Cassell, 1894). The investigation covers all the important states in this country, with a chapter on Canada, and it is beyond all doubt the fullest and most valuable report that has ever yet been printed on the subject. Prohibition, local option, high license and state dispensaries are all treated in turn with most interesting detail, based upon personal observation. Mr. Fanshawe shows the faculty of a trained observer, and is clearly endowed with a sane judgment. His work is in every respect an admirable production.

In *Social Peace, a Study of the Trade-Union Movement in England* (London, Swan Sonnenschein & Co., imported by Scribners, 1893), Dr. G. von Schulze-Gaevernitz issues a somewhat abridged English

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version of his two-volume work which was reviewed in the POLITICAL SCIENCE QUARTERLY, VI, 348 (June, 1891). He now adds an introduction which throws a somewhat amusing light on the condition of the labor question in Germany. The work is an excellent one. It is translated by Mr. C. W. Wicksteed and edited by Mr. Graham Wallas.

The Handbook of Sociological Information, with especial reference to New York City, which was prepared for the City Vigilance League by Dr. William Howe Tolman and Dr. William I. Hull, has passed to a second edition, which contains as much again matter as the first. The new matter is valuable. It includes a description of the institutions and associations in New York City which are designed to modify and ameliorate social conditions, and which are said to be representatives of "applied sociology." Each institution is described by a writer who knows his subject at first hand and signs his name. Such work has been needed, and will call forth the thanks of every sociological student and of every philanthropic worker. The first and older part of the book, purporting to be a bibliography of sociology, is unsatisfactory as a whole, though possessing many good features. In making it up the editors do not seem to have been guided by any definite conception as to what sociology is and what it is not. This part can only be described as a partial list of books and magazine articles on sociology, political economy, political science, charity, criminology and penology, social ethics, temperance, womanhood, university settlements, the Salvation Army, and many other important subjects.

Louis Paoli's Le Code Pénal d'Italie et son Système Pénal is a historical, descriptive and critical examination of the code of June 30, 1889. The author concludes that that code is "a treatise on penal philosophy." It has held in the main to the older views of criminal responsibility, but not without regard to the doctrines of criminal anthropology, especially in its dealing with the criminal insane. The questions of penitentiary methods, of conditional liberation, of the indeterminate sentence and of recidivism have been considered, he thinks, with great care. The abolition of capital punishment truly reflects Italian opinion. In short, to M. Paoli "the theoretical value of the new code seems undeniable; its practical value time will determine."

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